

CHAPTER 2

BACKGROUND TO PREFERENTIAL PROCUREMENT IN LOCAL GOVERNMENT

2.1. INTRODUCTION

The aim of chapter 2 is to look at the background of Preferential Procurement (PP) in the Local Government. The chapter looks at the essentials of the 1995 President's Conference, where delegates recognised SMMEs lack of market access;

Next, it discusses the policies governing public procurement at all levels of government. Under this topic, it looks at the role of the Local policy in the SMME development; the 1998 White Paper on Local Government is discussed; it looks at the State tender Board Act of 1968, the Provincial Tender Board Act, the State Tender Board General Directives and Procedures; the Directives to Departments in respect of Procurement and the Ten Point Plan is discussed. In addition, it discusses the aim, key principles, objectives and pillars of reform of the Green Paper on Public Sector Reform in South Africa.

Furthermore, the chapter discusses at the Public Finance Management Act, the Municipal Systems Bill and the Municipal Finance Management Bill. The next topic discussed is the Preferential Procurement Policy Framework Act (PPFPA). It discusses the objectives of the Act, Framework for implementation of the procurement policy, and the preferential procurement regulations.

The PPFPA has certain implications on procurement by Local authorities. Then a discussion is made on what would be like the procurement environment in a Transformed Local Authority.

To conclude, the chapter justifies the use of Affirmative Procurement in South Africa. AP is defined the need to implement it is discussed, as well as its key elements, its components and objectives.

2.2. THE 1995 PRESIDENT'S CONFERENCE

In March 1995, an international conference entitled the President's Conference on Small Business was held in Durban. In his keynote address, former President Mandela told delegates that the development of SMMEs was critical to the social and economic development of South Africa since they enhanced competitiveness of the kind which the economy needs. Furthermore, the development of this sector would assist in the economic empowerment of those previously disadvantaged. Concluding, former President Mandela affirmed that the stimulation of smaller firms could contribute a great deal to job creation. With appropriate support, small businesses could provide long-term jobs for millions. Moreover, barriers that have impeded the vast entrepreneurial potential amongst women should be removed. Equally, young people, especially in rural areas needed an option of migration to the cities. This process would need the support of big businesses. However, small businesses need to be the principal agent in their own expansion and development. (Department of Trade and Industry, 1995:1)

In order to provide maximum scope for discussion and the formulation of action proposals, conference delegates were split into eight parallel groups. Each group went through the following eight key support areas: (Department of Trade and Industry, 1995:4-10)

2.2.1. Business support

Local Business-service Centres (LBSCs) were identified in the conference as complementary and part of the RDP. Success factors for LBSCs relate to the quality and vision of their management, the focusing of efforts on clearly identified target groups, the balance between core services and additional activities, private and community "ownership" of the centres, and realistic fee and payment structure.

Individual LBSCs should operate on a self sufficiency and sustainability basis with clearly demarcated locational and functional boundaries and acceptance of a business orientation. The core activities of the LBSCs are to include the provision of appropriate information, advice, counselling, networking and experience management.

2.2.2. Access to markets

The 1995 President's Conference identified the lack of market access to SMMEs as one of the major constraints hindering their development in South Africa. Opening state markets to SMMEs therefore, is a major step to resolving this constraint. The government initiated a Ten Point Plan as an Interim strategy in 1995 to utilise the purchasing power of the government as an instrument of SMME development. (Ntsika, 1997:1).

In addition, at the conference, it was recognised that public-and-private-sector procurement markets, worth more than R6 billion each constitute a vital challenge for the SMME sector. Delegates accepted the challenge of an internationally competitive economy, integrally dependent on the vital contribution of the SMME sector.

In its contribution to the conference, Kelly, (1995:5) said that the problem faced by SMMEs in South Africa with regard to access to markets, is not unique and indeed is one of the most significant problems experienced by small business enterprises everywhere. In addition, a small margin preference may be given to emergent sub-contractors where the requisite quality and delivery requirements are met.

It is crucial that equity, transparency and the absence of prejudice on the procurement side is matched by competence, capability and competitiveness on the supply side.

International experience shows that in the long-term the best format for the development of private-sector business linkages is through voluntary and mutual benefit-type activities. Coercive programmes or reservation programmes by and large do not, in the long term work in the private sector. The emphasis should be on

the development and upgrading of supply-sector capabilities to address opportunities with the big business and export sector.

Human resource development and capacity building are felt to be critical areas in the development of the supply sector. Quality and quantity training is viewed as important for entrepreneurship development. School curricula and extra-curricula activities related to entrepreneurship are also seen as important.

2.2.3. Access to finance

It was widely felt that lack of access to finance was the greatest hurdle, both for start-up entrepreneurs and for expanding enterprises. Patten, (1995:7) argued that a micro-enterprise needs continuing access to credit for operation and expansion, not just a once-off time credit. Such a financial institution must itself, be financially viable to be able to repeat loans, in response to increasing demand. "Stop-go lending" is highly disruptive to micro-enterprise businesses.

2.2.4. Improving the physical environment

Delegates felt that the focus should fall on three critical areas, viz. the role of local governments, the use of land and of premises and buildings, and the RDP spending in rural as well as urban areas.

Particular emphasis will have to fall on the needs of SMMEs in rural areas, given the past neglect of rural business-infrastructure facilities. This includes the communication system as well as the supply of water and electricity, which is critical for agro-processing. In the interim, mobile production centres and multipurpose structures are to be considered.

Local governments should make town planning, zoning and building standards more appropriate to SMMEs. They should facilitate the establishment of informal markets and micro-enterprise storage spaces.

Government authorities should facilitate access to land and business premises for black entrepreneurs; they should also help rehabilitate black land-ownership or registration and enable entrepreneurs to get access to under-utilised land and premises. Business premises owned by development corporations should be sold to SMMEs.

2.2.5. Human resources development

Human resource development and capacity building are felt to be critical areas in the support of SMMEs. Literacy and numeracy training is viewed as important for entrepreneurship development. School curricula and extra-curricula activities related to entrepreneurship and the business scene need more attention.

Training courses should be modular and relevant to the needs of sectors and target groups. Accreditation processes have to be carefully planned to overcome present problems, in particular with respect to the recognition of prior learning and experience and the role of training boards.

More attention needs to be given to the training of trainers, the better co-ordination of training services to avoid duplication and research on training methods. Healthy competition among training providers has to be promoted.

Special programmes also have to be developed for women, the youth, rural entrepreneurs, the disabled and other target groups. In this respect, inter-departmental co-operation is necessary between education, labour, trade and industry as well as agriculture.

LBSCs should be used as training networking agencies. The funding of training was felt to be a major concern. Public-sector funds should support training organisations, subsidise counselling and aftercare, and directly assist entrepreneurs through a coupon or voucher.

2.2.6. Institution-building

This focus area was felt to be the most important of all since it centres on the establishment and structuring of new organisations to implement, co-ordinate and fund small business support at national, regional and local level.

Delegates stressed the need for transparency in the planning process, clear demarcation of roles and responsibilities between national and provincial structures and effective communication between the DTI and the different support agencies.

Any new institutional framework should be lean and flexible, it should be representative of both small business and government's interests and its eventual shape should be discussed with stakeholders through provincial workshops.

All government departments should be SMME sensitive and the allocation of all funds should be a non-partisan and transparent basis. New institutions should be staffed with professional people who are sensitive towards the unique problems of entrepreneurs. The staff structure of support agencies should reflect the demographic composition of the population.

2.2.7. Local economic development

Participants were aware of the significance of local partnerships to improve conditions for SMME development. In order to succeed, there must be a process of consultation, participation and capacity-building with respect to the local stakeholders.

Existing organisations must be incorporated into new or amended structures. These should include local authorities, civic associations, local business chambers, stokvels and women's organisations, traditional authorities and churches.

Local economic-development (LED) initiatives can take many different forms; successful initiatives should be documented and the information made available as widely as possible. LBSCs can play a vital role in this process. Much of the focus in LED relates to the expansion of local business activities through more subcontracting from public as well as larger private enterprises.

2.3.1. Local policy and SMME development

The importance of the local policy sphere and the potential role of local governments in SMME development are increasingly recognised. The potential significance of local intervention is twofold viz. in terms of translating national-level (and potentially

2.2.8. Targeting assistance

The conference endorsed the White Paper's suggestion, that support to SMME has to be prioritised, in accordance with the availability of resources and the need to give particular attention to the demands of black economic empowerment, and the needs of women entrepreneurs, youth self-employment and rural SMMEs.

In addition to these target groups, support also has to be focused and integrated to suit the needs of specific economic sectors (e.g. tourism or agriculture), industrial niches, subregions and/or clusters of towns or suburbs. All of this calls for bottom-up grassroots planning of support, with government assisting rather than being responsible for all the actions.

The conference provided an opportunity for the widest possible spectrum of SMMEs and their representatives to air grievances, voice concerns and lay claim to state support.

However, it was impossible during the conference debates to translate demands or recommendations into affordable support programmes due to the absence of concrete budget proposals.

In order to address this, more NGOs have to be properly to be able to lend money to micro-enterprises. The proposed wholesale financing system and a national credit-guarantee system are ways to reduce the cost of funding and increase its ability

2.3. POLICIES GOVERNING PUBLIC PROCUREMENT AT ALL LEVELS OF GOVERNMENT

2.3.1. Local policy and SMME development

The importance of the local policy sphere and the potential role of local governments in SMME development are increasingly recognised. The potential significance of local intervention is twofold viz. in terms of translating national-level (and potentially

also provincial level) policies to local level and in providing support to a range of local-level initiatives, often operated by NGOs at the community level. (Sharp, Mashigo & Burton, 1999:13, 14)

The 1998 White Paper on Local Government stresses the vital significance of fostering a culture of developmental local government in South Africa. This would have four major characteristics: namely (1) exercising municipal powers and functions in a manner that maximises their impact on social development and economic growth; (2) playing an integrative and coordinating role to ensure alignment between public and private investment within the municipal area; (3) democratising development; and, (4) seeking to empower marginalised and excluded groups within the community. (Sharp *et al*, 1999:13).

The critical importance of SMME policy development as part of broader local economic development planning is a recurrent theme in several national government policy documents, including the White Paper on Local Government (South Africa, 1968). Local governments may introduce several kinds of policy intervention, either directly or indirectly, to support the expansion of local SMMEs. Among possible policy interventions are the following, (Sharp *et al*, 1999:13):

- The promotion or marketing of a local area;
- The collection of information/data on existing SMMEs;
- The encouragement of local SMMEs through affirmative procurement;
- The identification of local opportunities;
- Improving the availability or use of premises by SMMEs;
- Offering assistance with local training programmes.

An important role therefore exists for local strategies to complement national policies by making them more targets to provincial and local circumstances. A coherent layer of provincial and local level response to the need for a SMME development strategy has yet to appear. In light of the growing significance of local economic development planning, this missing level of policy is especially disturbing. (Sharp *et al*, 1999:14)

The 1995 White Paper on the National Strategy for the development and Promotion of SMMEs in SA identified government procurement as a vital instrument in ensuring market access for SMMEs. Since then, a number of guidelines have been laid down to ensure that the government system of procurement does not only award tenders to large companies, but instead ensures that SMMEs gain access to these tenders and contracts. The following are the major legislative and guideline documents that influence the procurement policy on national and provincial levels. (Sharp *et al*, 1999:14-16)

2.3.2. The 1998 White Paper on Local Government

A key feature of the 1998 White Paper on Local Government is that it highlights the importance of the new responsibilities of local government for local economic development. Although it is made clear that local governments are not responsible for job creation per se, there are a number of areas of policy intervention open to local governments. These include procurement reform and the contracting out of services which might have a positive impact on the SMME economy as well as on employment creation in particular. (Sharp *et al*, 1999:12)

In addition, one of the surprising features associated with globalisation is that it has re-asserted the significance of the local level of policy development. In particular, in matters pertaining to economic development, wide acknowledgment is now given to the critical role that can be assumed by the local layer in the policy environment, including SMME development. In a recent policy document issued by the Department of Constitutional Development, local government activity in respect of economic and social development was described as the “hands and feet” of reconstruction and development in South Africa. (Sharp *et al*, 1999:12)

2.3.3. The State Tender Board Act of 1968

2.3.3. State Tender Board general directives and procedures (ST36)

The foundation for the governmental procurement policy lies with the State Tender Board, Act of 1968, which was amended in 1987. This stipulates that the State Tender board should comprise between sixteen and twenty members, all of which

are appointed by the Minister of Finance. Within this legislative Act, there is no special mention made of SMMEs or small businesses in particular. The State Tender Board act was the legislation upon which all other acts were based. It is the act that National departments use, while Provincial acts are loosely based on it for the most part. (Sharp *et al*, 1999:15)

2.3.4. Provincial Tender Boards Acts

After 1994, each province passed its own provincial Tender Board Act, effectively repealing the State Tender Board Act within their respective provinces. These acts were based on the State Tender. The provincial tender boards have the power to determine their own conditions, regulations and procedures concerning procurement, subject to certain stipulations of the State tender Board Act and user manuals.

Each provincial Act has set up respective provincial Tender Boards with the same functions as the State Tender Board, but on provincial levels. A specific value is set by each province for adjudication, above which tenders are referred to the State Tender Board. Each Provincial board may delegate powers to committees, persons or bodies of persons or holders of posts designated by the Board. Provincially, the tender Board is where decision-making power is located, while the office of the Tender Board performs secretarial and administrative duties.

The Northern Transvaal Tender Board act provides that the Advisory Board is able to advise the MEC (Finance) responsible for making regulations on procedures, and in this way has been innovative in diverging from the national Act. The Northern Cape, Free State and Eastern Cape Acts, also provide for Advisory boards, while the North-West, Western Cape, Mpumalanga and Gauteng Acts do not. The KwaZulu-Natal Tender Board Act innovatively provides for representatives from the SMME sector in the composition of the Tender Board. (Sharp, *et al*, 1999:15)

2.3.5. State Tender Board general directives and procedures (ST36)

The State Tender Board Act was followed by the issuing of General Directives for the Board (ST36) that outlines procedures on the details of tender invitations, the

consideration of tenders and the administration of contracts. These directives clearly outline the absolute authority and necessary approval of the tender board throughout the process. ST36 forms the general directives for the board. Both ST36 and ST37 formed the basis for user manuals in the provinces although each retains the power to formulate the power to formulate their own policies to comply with the State Tender Board Act. (Sharp *et al*, 1999:15)

2.3.6. The User Manual: Directives to Departments in respect of procurement (ST37)

The State Tender Board's User Manual of Directives to departments in Respect of procurement (ST37), provided guidelines on the procurement process and procedures for National and Provincial Departments. It was designed specifically as a general user's manual to elucidate the policy and directives of the State tender Board to Departments and other user organisations, and has been used as the basis for the departmental and provincial user manual on procurement. Specifically, these directives inform departmental, provincial tender boards and tender committees on procurement policies and procedures. An important element of these guidelines is the proposal that tender results and awards be made available to tenderers (via the Government Tender Bulletin or Tender Advice centres) thereby ensuring transparency and evaluation.

The Directives also outline the advantage for SMMEs of the policy of dividing tenders into smaller manageable segments, (breakout procurement/unbundling) in order for these businesses to participate. In stimulating the participation of SMMEs within public sector procurement, all user departments are supposed to have a list of prospective suppliers, which should include SMMEs. The list should be maintained on a regional or central basis and be updated continuously to incorporate newly established businesses.

The Directives dictate that each of the nine provinces operates its own Tender Board, leaving the State Tender Board to render a procurement service to National Government Departments. These departments have the right to formulate specific procurement policies within the broader framework of the State tender Board Act and

to require authorisation by the State Tender Board Act and to require authorisation by the State Tender Board itself. (Sharp, 1999:16)

2.4. THE TEN POINT PLAN

The reform of the government procurement process of services and supplies began with the Ten Point Plan in November 1995. The Ten Point Plan is directed at utilising the purchasing power of the government as an instrument of SMME development. It is aimed at removing some of the bottlenecks hindering the SMMEs' participation in supplying goods and services to the state. This outlined interim strategies and they are as follows, (Ntsika, 1997:16-20)

2.4.1. Improvement of access to tendering information

This refers to obtaining accurate and timely information about tendering opportunities. The publication of tenders should be simplified so that SMMEs can easily identify their sectors. The Government Tender bulletin must be available on a subscription basis to all tenderers. Further information about tenders will be mailed to potential tenderers. The tenders will be included in a databank organised by government departments and service providers. (Ntsika, 1997:16)

2.4.2. Development of tender advice centres

Public sector procurement is perceived by many SMMEs as a complicated and mysterious process. To increase the SMME share in there public sector markets, it is essential that assistance be provided in an effective manner. It is in this respect that the government should assist in the establishment of tender advice centres throughout the country. Non-Governmental Organisations (NGOs) that qualify to be Local Business Service Centres will form the backbone of the system to provide tender advice to SMMEs. A tender advice centre in each service provider will assist SMMEs with information regarding tenders. (Ntsika, 1997:17):

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The functions of tender advice centres are the following (Ntsika, 1997:17):

- To provide information on all matters related to public sector procurement and maintain an active relationship with user departments;
- Where necessary, the centres will convene pre-tender recorded meetings for the purpose of obtaining details of prospective tenderers;
- To assist with preparing their submission forms;
- To organise workshops, seminars, lectures, to inform SMMEs about procurement issues and to de-mystify the tendering system;
- To assist SMMEs in all matters related to public sector procurement.

2.4.3. Broadening of participation base for contracts less than R7500

The present system of telephonic tenders for goods and services valued at less than R1500 or three quotations for contracts valued at less than R75000 tends to favour suppliers that are already known to departments. To improve this situation it is important to establish databanks of SMMEs from which suppliers can be sought. Due to their low overheads, SMMEs can be competitive in supplying small quantities. To involve them more the following measures have been proposed, (Ntsika, 1997:17):

- To categorise all goods and services in this market into easily identifiable sectors in this market;
- Develop an application form that enables prospective suppliers to submit relevant information for evaluation and listing on a database;
- Advertise widely over a period of time to invite suppliers in various sectors to submit applications;
- Request businesses and trade organisations to inform their members about this process;

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- Prepare a databank of suppliers with details of business activities and regional location;
- This list should be used for suppliers valued at less than R 1 500. A separate list for supplies up to R20 000 must also be established;
- A monitoring system must be put in place to evaluate the effectiveness of this strategy and make any adjustments if necessary

2.4.4. Waiving of securities/sureties on construction contracts with a value of less than R100 000

Clause 60 of the State Tender Board's General conditions and Procedures (ST36) requires that the financial security sureties be provided by the tenderer after receiving a letter of acceptance. This is considered a major stumbling block for SMMEs wishing to enter the public sector procurement. The ten point plan, therefore requires that securities/sureties be waived for contracts with a value of less than R100 000. Contract estimates by user departments by user departments at less than R100 000 will automatically not require security. This mechanism facilitates immediate entry by SMMEs into the state tendering system. (Ntsika, 1997:18)

2.4.5. Unbundling of large projects into smaller projects

SMMEs regard market constraints and the inability to sell their products and services, as serious obstacles to their growth. By means of the tendering system, the government can assist developing SMMEs and so achieve some of the RDP objectives. Breaking large contracts into smaller ones where possible can be a method of removing these obstacles for growth of SMMEs. The following process has been accepted by the State Tender Board: Where possible, tenders must be packaged into suitably sized segments to target SMMEs. In addition, appropriate standards, specifications, delivery dates and related contractual obligations must be employed to ensure that small businesses will be able to cope and compete effectively. To achieve effectiveness, a complete review of all period contracts must

be undertaken in order to provide more opportunities for SMMEs in state markets. (Ntsika, 1997:18)

2.4.6. Promotion of early payment cycles by government

Besides the market constraints, SMMEs cite finance as another major obstacle to their growth. In particular reference is made to the problems regarding the delays in payments and the cash flow implications. These obstacles often result in entrepreneurs losing special discounts because they are unable to pay their accounts timeously and in some instances they have to absorb high financing costs. It is necessary for departments to improve and streamline their payment procedures in order to accommodate SMMEs. While large organisations can absorb the costs of delayed payment, these costs can be devastating for SMMEs. (Ntsika, 1997:18)

2.4.7. Development of a preference system for SMMEs owned by historically disadvantaged individuals

At times, preference or targeting can be used to develop policy measures directed at uplifting specific groups e.g. rural areas, women, youths, the disabled, etc. In this regard, preference is indicated by means of a point system. These points are then converted into a percentage price preference. All contracts below R2 million fall within the range in which such a preference system can be used. (Ntsika, 1997:19)

2.4.8. Simplification of tender submission requirements

The system of tendering can be complicated for SMMEs and needs simplification. Requirements for supporting information can be discouraging and should be kept to a minimum. Logistical problems in preparing and submitting tenders are often encountered by SMMEs. The ten point plan proposes that tender submission documentation be simplified and rationalised as much as possible. The process proposed by the ten point plan includes the complete review of the numerous submission forms presently in use. It aims at consolidating essential information and reformatting tender forms, minimising the number of pages and including other relevant information for SMMEs. The new restructured forms, which would be user

friendly, would then be submitted to the office of the state Attorney for approval prior to implementation. (Ntsika, 1997:19)

2.4.9. Appointment of a procurement ombudsman

There are continuous accusations and complaints that the State tender Board is unfair, biased, inconsiderate, and not transparent. Taking into account that the system of government procurement is still controlled by the existing conditions, procedures and regulations and perceived by SMMEs as favouring established businesses, a market arbiter is necessary. (Ntsika, 1997:19)

In the ten point plan it has been proposed that a procurement ombudsperson be appointed during the period of reform. This person will provide a mechanism for quick and effective intervention regarding complaints from businesses. The proposed process would be set in consultation with the office of the Ombudsperson or Public Protector; an appointment can be made for a person who would intervene in and report on matters related to procurement. In addition, to ensure independence, the person appointed should operate independently with easy and unrestricted access to information from State Tender Board and user departments. Then, eventually, this person could implement an effective monitoring system and a watchdog role to ensure that the government adheres to its proposed new procurement policy. (Ntsika, 1997:19)

2.4.10. Classification of building and engineering contracts

Contracts in the public sector have been structured in such a manner that well established manufacturers and suppliers have been favoured, particularly in the engineering sector. Traditionally contractors have been required to have all the necessary resources such as technical, managerial, administrative and commercial skills as well as finance for the various aspects of the project. They have also been expected to have sufficient credibility to raise sureties and obtain credit. A new view of contracts, aimed at empowering former disadvantaged communities, must be developed in South Africa. (Ntsika, 1997:20).

The ten point plan classifies contracts into the following categories (Ntsika, 1997:20):

- International contracts that large SA companies do not have the capacity to implement e.g. providing military planes, ships, etc.
- Major contracts are contracts that are onerous, e.g. construction of bridge, etc.
- Minor contracts can use SMMEs as suppliers. The following are characteristics of these contracts:
 - The potential risk involved is small;
 - The period of completion usually not more than six months but certainly less than twelve months;
 - The contract value usually less than R1 million but generally not more than 6 million;
 - The works are of a strategic forward nature in terms of complexity, quality and tolerances;
 - The site establishments requirements are not onerous;
 - Save for design work for which the contractor is responsible, the design of the work is complete before tenders are invited;
 - The contractor's responsibility for nominated or selected subcontracts is limited;
 - The contractor is not required to undertake work of a specialist nature

- Micro contracts are very small contracts with a value no less than R10 000.

2.5. THE GREEN PAPER ON PUBLIC SECTOR PROCUREMENT REFORM IN SOUTH AFRICA

2.5.1. Aim

The Green Paper explains that its aim is to give all South Africans the opportunity to contribute to the process of change that will have a profound effect on all. South Africa is currently facing enormous challenges, both locally and internationally, as it opens the economy to the combined impact of global investment and free trade regulation. (RSA, 1997: 131)

It is envisaged that a coherent and adequate resources procurement policy will contribute to the national objectives of: Developing and utilising the country's human resources potential to the full. This in turn would allow for a well-developed business sector capable of participating fully in the new South African economy; as a result there would be an improved quality of life for all and an improved international competitiveness for the South African economic activity. (RSA, 1997: 131)

The common features in the Green Paper include building on existing strengths and restructuring government policies and programmes to support the principles of the Growth Employment and Redistribution (GEAR) as outlined in the macro-economic strategy. The desired output of this process is to develop world class professional procurement policies and systems, while ensuring the productive participation of previously disadvantaged persons, in a manner that promotes entrepreneurship and the adoption of best practice within all South African businesses while improving international competitiveness. (RSA, 1997: 132)

The Green Paper sets out the key elements of the Government's new strategy for procurement. In addition, the evolving institutional framework through which the strategy should be implemented is also addressed. The Green Paper process should ultimately result in the formulation of new procurement Policy in South Africa, to be

published as a White Paper and the beginning of legislative reforms pertaining to procurement. (RSA, 1997: 131)

2.5.2. Procurement reform: objectives

2.5.2. Procurement reform: key principles

The Green Paper on Public Sector Procurement has two main reform objectives

It is argued in the Green Paper (RSA, 1997:13, 14) that there is a need in South Africa to change the procurement system in order to face the challenges presented by changes in both the local and international environments. As a result, the Ministry of Finance, in conjunction with the Ministry of Public Works has drawn up the Green Paper on procurement reform to initiate the process of reform. The government's aim is to transform the public procurement process in order to achieve its socio-economic objectives within the ambit of good governance. The document makes several proposals for the reform of the procurement process. At the heart of these proposals are *four key principles*:

The first principle is the recognition that previously public tendering system favoured the established and larger businesses, and it was very difficult for any newcomer to enter into the public sector procurement system. At present government recognised the importance of previously marginalised SMMEs and will use the procurement system free of unnecessary obstacles to those SMMEs, and eliminate the injustices of the past. Nevertheless, good value for money cannot and will not be negated. According to the constitution, the procurement system must be competitive, fair, transparent and cost-effective.

The second key principle is the attainment and maintenance of good governance. This includes good and sound financial control

Thirdly, consists in non-tolerance towards corruption within the government services and within the country as a whole

Fourthly, any principal doing business with the public sector must aim to make a profit; in addition, taxation and service charge obligations must be met.

2.5.3. Procurement reform: objectives

The Green Paper on Public Sector Procurement has two main reform objectives, which are: socio-economic and good governance. Achieving *socio-economic objectives* include the following, (RSA, 1997:15):

- To seek value for money on behalf of all taxpayers;
- To eliminate corruption in the procurement process;
- To make the public procurement process accessible to all by simplifying the process, and by encouraging fairness and transparency;
- To encourage greater competition in the public procurement process through the creation of an enabling environment for creation of an enabling environment for SMMEs while retaining quality and standards;
- To support participation of a broadened range of enterprises with appropriate inland revenue registration and acceptable labour practices in order to ensure sustainability;
- To revise the concept of value-for-money in the procurement process in terms of the new objectives which are to be applied;
- To set out targeting policies in order to create opportunities for the broadest possible participation in the public procurement process;
- To increase the volume of work available to the poor and to enhance the income generation of marginalised sectors of society

Achieving *good governance* objectives includes the following, (RSA, 1997:16):

- To promote effective procurement practice and systems to enable government to timeously decline the quantity and quality of services demanded by its constituents;
- To achieve continuing improvement in value for money based on life cost and quality;

- To enhance the competitiveness of suppliers through the development of world class procurement systems and practices;
- To ensure that control and accountability is maintained through comprehensive auditing;
- To achieve a uniform procurement system with standardised tendering procedures policies and contract documentation for implementation at national and regional level;
- To ensure that public sector procurement complies with the provisions of the constitution;
- To ensure consensus within government on the reform of the public procurement process and to encourage the adoption of the reformed process

2.5.4. Procurement reform: pillars of reform

In order to achieve socio-economic and good governance objectives, the Green Paper points to the need to implement two pillars of reform: Socio-economic and institutional. (RSA, 1997:135, 136)

2.5.4.1. Socio-economic reform

Socio-economic reform intends to promote economic reconciliation and competitiveness. This can be achieved by maximising SMMEs participation without compromising time, cost and quality. In addition, value for money should not be based on least cost alone; instead it should include well defined socio-economic criteria which can be evaluated in a transparent and measurable manner.

(RSA, 1997:135)

Another characteristic of socio-economic reform is the direct targeting of previously disadvantaged persons to existing opportunities. By targeting government intends to facilitate the development of SMMEs particularly those owned and operated by previously disadvantaged persons. If this is accomplished, there will be an increase of the volume of work available to the poor and the income generation of marginalised sectors of society. Targeting also includes the use of affirmative action

to address the deliberate marginalisation from economic, political and social power of black people, women and rural communities, and to empower communities and individuals from previously disadvantaged sectors of the society. (RSA, 1997:135)

tendering procedures and contract documentation. (RSA, 1997:136)

Most importantly the policy of targeting should not compromise the principles of fairness, competition, cost-efficiency and inclusion and should be subject to periodic review. In order to be effective, the procurement process should be made accessible to the target groups, and structured in a simplified and user-friendly manner. In addition the third tier of government should identify area bound targets and select associated delivery mechanisms. (RSA, 1997:135)

procurement officials and those engaged in providing goods, services and works

The role of international competition is particularly relevant; however it should not prejudice local enterprises and should be used as an opportunity to develop and advance local industry through technology transfer and human resource development. (RSA, 1997:135).

Procurement Framework. In the context of

incentive system for local content, or an offset policy with a view towards export competition. However, standards and specifications should result in appropriate

Institutional reform must beforehand comply with the provisions of the constitution, support macro economic policies, be an instrument of the transformation process, promote tax morality and improve labour standards. (RSA, 1997:136)

do not impact negatively on the overall objectives of South African Socio-economic

National legislation should prescribe a procurement framework which regulates procurement procedures, practices, documentation, policies, preferences and control measures in all organs of State. In this context, it should be ensured that procurement agencies comply with the national procurement legislation and framework and associated regulations. This should be the procurement control and monitoring functions of a national procurement Compliance office. (RSA, 1997:136)

and provincial governments to ensure that all revenue, expenditures, assets and

The National Procurement Compliance Office should have five specialist arms, which have functional responsibilities in respect of registration, administration, socio-economic affairs, technical matters and education and training respectively. All enterprises which contract with organs of State, should be registered and all targeted enterprises certified. A comprehensive training and skills development programme

should be embarked upon to ensure that procurement officials have the necessary procurement skills. In addition, this office should regulate and prescribe all documentation in order to achieve a uniform procurement system with standard tendering procedures and contract documentation. (RSA, 1997:136)

Offices of Tender Boards (as opposed to the Boards themselves) should be reconstituted as Procurement Offices responsible for central tendering and certain ad hoc contracts. Consumer organs of State should be authorised to act as Procurement centres in order to procure goods, services and works, based on predetermined criteria. A code of conduct should be drafted to govern the actions of procurement officials and those engaged in providing goods, services and works. (RSA, 1997:136)

Parastatals should not unfairly compete with the private sector and should comply with the provisions of a National Procurement Framework. In the interim, a preference system for local content, or an offset policy with a bias towards export promotion, should be used to support the local economy in the face of foreign competition. However, standards and specifications should result in appropriate quality being procured to satisfy user needs and should not be used to exclude emerging enterprises from participation. Measures should be taken to ensure that the effects of the World Trade Organisation's (WTO), Code on Government Procurement do not impact negatively on the overall objectives of South African Socio-economic reform. (RSA, 1997:136)

2.6. PUBLIC FINANCE MANAGEMENT ACT AS AMENDED

The Public Finance management Act, (PFMA) gives effect to section 216(1) of the constitution, i.e. it regulates "financial management in the national government and provincial governments to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively". (Watermeyer, 2000:5)

The PFMA establishes a National Treasury "consisting of the Minister who is head of the treasury and the national department or departments responsible for

financial and fiscal matters". This Act permits the National Treasury to prescribe uniform treasury norms and to monitor and assess the implementation of this Act, including prescribed norms and standards. (Watermeyer, 2000:5)

Section 76(4) permits the National Treasury to make regulations or issue instructions applicable to all institutions to which the Act applies concerning, *inter alia*, the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. The Act requires Accounting officers and accounting authorities to have: (Watermeyer, 2000:5)

- An appropriate procurement and provisioning system which is fair, equitable transparent, cost effective and competitive.
- Effective, efficient and transparent systems of financial and risk management and internal control; and
- A system for properly evaluating all major capital projects prior to a final decision on the project.

2.7. MUNICIPAL SYSTEMS BILL

The Municipal Systems Bill was introduced into Parliament during April 2000, to provide the core principles, mechanisms and processes that are necessary to enable municipalities to *inter alia*, move progressively towards the social and economic upliftment of communities. This bill allows municipalities to provide for municipal services itself (i.e. through an administrative structure within its administration or an internal trading entity) or by way of service delivery agreement must select the service provider through selection and pre-qualification processes which (Watermeyer, 2000:6):

- Are competitive, fair, transparent, equitable and cost-effective;
- Allow all prospective service providers to have equal and simultaneous access to information relevant to the bidding process;

- Minimise the possibility of fraud and corruption; and
- Make the municipality accountable to communities, residents and ratepayers about progress with selecting a service provider and the reason for any decision in this regard. Watermeyer, (2000:6)

2.8. MUNICIPAL FINANCE MANAGEMENT BILL

The intent of Municipal Finance Management Bill (MFMA) is to regulate financial management in the local sphere of government requiring that all revenue, expenditure, assets and liabilities of municipalities and municipal entities are managed efficiently and effectively and to determine the responsibilities of persons entrusted with local sphere financial management. This Act will apply to municipalities and municipal entities and empowers the national treasury established in terms of the Public Finance Management act, *Inter alia* to monitor their budgets, expenditure and revenue, to prescribe uniform treasury norms and standards, to monitor and assess compliance with the Act and standards of accounting practice and to address a serious or persistent breach of the Act. Watermeyer, (2000:6)

The basic philosophy underlying the approach to municipal finance in the Bill is to allow “managers to manage and be held accountable” while councillors are provided with information necessary to set overall policy and priorities for the municipality.

Here, accounting officers and accounting authorities are required to have an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective. They also have to use effective, efficient and transparent systems of financial and risk management and internal control, and a system for properly evaluating all major capital projects prior to a final decision on the project.

Accounting officers in addition must settle all contractual obligations and pay all monies owing within the prescribed or agreed period and must ensure that expenditure is in accordance with the budget of the municipality.

Accounting officers and accounting authorities may delegate powers entrusted to them to one of their officials or instruct one of their officials to perform any of the duties assigned in terms of the Act. Such arrangements, however, do not relieve them of any of their responsibilities in terms of the Act.

This Act also requires that risk is managed in contractor development programmes and capital works that may be executed through such programmes are properly evaluated before work commences. As a result, development programmes which are non-competitive, inefficient, and non-cost effective, exposing municipalities to undue risk, or producing inappropriate assets must be avoided. The use of fixed-price contracts and set- asides (i.e. a system whereby only certain contractors are eligible to tender for works) violate the requirements of the Act and section 217 of the Constitution and as such can not be used to promote development aspirations.

Watermeyer, (2000:8)

2.9. THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT

The Preferential Procurement Policy Framework Act (PPPFA) dictates that organs of state should implement procurement policy providing for categories of preferences in allocation of contracts and advancement and protection of persons disadvantaged by unfair discrimination. Department of Public Works, (2000:1).

2.9.1. Memorandum on the objects of the Act: constitutional provisions

Watermeyer, (2000:4) explains that procurement is a subject of the constitution of South Africa. Section 217(1) requires that procurement be in accordance with a system which is fair, equitable, transparent, competitive and cost effective. Section 217(2) provides for preferencing policies in the allocation of contracts. The requirement for the legislation lies in section 217(3) of the constitution, which requires that national legislation must prescribe a framework within which preferential procurement must be implemented. Section 216(1) requires that national legislation “establish a national treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing general

recognised accounting practice; uniform expenditure classifications; and uniform treasury norms and standards.

The above mentioned constitutional provisions have a profound effect on procurement by all levels of government. The constitution also gives everyone the right to access to information held by the state and the right to administrative action that is lawful, reasonable and procedurally fair. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons. Act 2 of 2000 gives effect to the right of access to information; Act 3 of 2000 gives effect to the right to just information. Both these Acts can impact on procurement processes.

2.9.2. Objectives of the Act

The objective of the Act is to give effect to section 217(3) of the Constitution. It does it, by providing a framework for the implementation of a preferential procurement policy, which is contemplated in section 217(2) of the Constitution as well as to provide for matters connected therewith. (RSA, 2000:2)

2.9.3. Framework for the implementation of the procurement policy

According to the requirements of the Act, each organ of state must determine its preferential procurement policy and implement it within a prescribed framework. That framework must include, (RSA, 2000:2):

- A 90/10 preference points system above a prescribed amount. That is, for contracts with a Rand value above a prescribed amount, a maximum of ten points may be allocated for specific goals provided that the lowest acceptable tender scores 90 points for price; the following formula is used to calculate tender prices in relation to the lowest acceptable tender

$$P_s = P_{min}/P * 90/1$$

Where P_s = points scored for price by tender under consideration;

P_{min} = tender price of lowest acceptable tender under consideration;

P = tender price of acceptable tender under consideration

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- A similar 80/20 points system, but below a prescribed amount; that is, for contracts with a Rand value equal to or below a prescribed amount, a maximum of 20 points may be allocated for specific goals provided that the lowest acceptable tender scores 80 points for price.

Any other acceptable tenders which are higher in price must score fewer points, on a *pro rata* basis, calculated on their tender prices in relation to the lowest acceptable tender, in accordance with a prescribed formula. (RSA, 2000:4)

The specific goals may include RDP development principles and contracting with persons, or categories of persons disadvantaged by unfair discrimination. In this context, any specific goal for which a point may be awarded must be clearly specified in the invitation to submit a tender; and the contract must be awarded to the tenderer who scores the highest points, unless sound reasons justify the award to another tenderer. (RSA, 2000:4).

Any invitation to submit a tender as contemplated in subsection must clearly define: the categories of preference; the persons or categories of persons, disadvantaged by unfair discrimination to be protected or advanced; any goals must be measurable, quantifiable and monitored for compliance. (RSA, 2000:4).

In relation to *transitional provision*, any tender which was advertised before the date of commencement of this Act must be finalised as if it had not come into operation. In addition, the Minister may make *regulations* regarding any matter that may be necessary, or expedient to prescribe, in order to achieve the objects of the Act. (RSA, 2000:4).

2.9.4. Preferential procurement regulations

The Regulations were published in the Government Gazette, (RSA, 2001:4). These will enable the achievement of the objectives of the Preferential Procurement Framework Policy Act, 2000. The schedule comprises three main components: *Part one* addresses definitions and applications; *Part two* addresses the preference point system, evaluation of tenders, awarding of tenders not scoring highest points, cancellation and re-invitation of tenders; *Part three* addresses duty to plan, general conditions, principles, declarations, penalties, tax clearances and tender goals.

2.9.4.1. The Preference point system

The regulations comply with the requirements of the PPFPA in relation to its framework for the implementation of a preferential procurement policy. For instance, there are two preference points systems: the 80/20 and the 90/10. In the 80/20 the following formula must be used to calculate the points for price in respect of tenders/procurement with a *Rand value* (means the total estimated value of a contract in Rand denomination which is calculated at the time of tender invitations and includes all applicable taxes and excise duties) equal to, or above R30 000 and up to a Rand value of R500 000. Organs of State may, however, apply this formula for procurement with a value less than R30 000, if and when appropriate, (RSA, 2000:7):

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Rand value of offer tender consideration

Pmin = Rand value of lowest acceptable tender

In this point system, a maximum of 20 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals. The points scored by a tenderer in respect of the goals contemplated in this sub-regulation must be added to the points scored for price. Only the tenderer with the highest number of points scored may be selected.

When using the 90/10 preference point system the following formula must be used to calculate the points for price in respect of tenders/procurement with a Rand value above R500 000, (RSA, 2000:7):

$$Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Rand value of tender consideration

Pmin = Rand value of lowest acceptable tender

A maximum of 10 points may be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and / or achieving any of the specified goals. The points scored by a tenderer in respect of the goals contemplated in this sub-regulation must be added to the points scored for price. Only the tender with the highest number of points scored may be selected.

2.9.5. The implication of the Preferential Procurement Policy Framework Act on procurement by local authorities

Watermeyer, (2000:9) explains that the Preferential Procurement Framework Act requires councils to establish their preferential procurement policies within the framework provided for in the Act. Thus the role of the Council is to set preferential procurement policies within the framework embodied within legislation while the role of the accounting officer is to execute such policies. Current tendering committees can, however, perform a monitoring function in the new regime to ensure that policy

intent is met during the execution of contracts and that due process has been followed. Their function as such, will be to monitor for compliance with both the provisions of the Act and preferential procurement policies made by the council. They can also set priorities within a preferential procurement policy as well as targets for a particular financial year. They can also monitor the targeting strategies, which are used within a programme to ensure that such strategies will enable targets which have been set to be achieved.

In addition, the Green Paper on Public Sector Procurement Reform in South Africa suggests that the third tier of government should define marginalised sectors of society, establish area bound targets, interface with and assist regional and national implementing departments in choosing the best contract strategy for a project, establish databases and perform a project co-ordination role. Tender Committees could possibly fulfil this function.

2.9.6. The procurement environment in a transformed local authority

Watermeyer, (2000:12) elucidates that while the Municipal Finance Management Act provides for good governance, the Preferential Procurement Policy Framework Act facilitates the use of procurement as an instrument of social policy.

Furthermore, he argues that the new legal framework requires a major change in thinking attitudes and procedures. The Local Government Ordinance (017 of 1939) empowers councils to “enter into contracts for the purpose of any work or service ...” whereas the Municipal Finance Management Act empowers and requires accounting officers to perform this function. This change in transferring accountability from the collective to the individual (or holder of a post) necessitates a major change in current procedures and the redefining of the role of tender committees and the role of councillors in procurement.

2.10. THE USE OF AFFIRMATIVE PURCHASING IN SOUTH AFRICA

Badenhorst, (1995:2) defines affirmative purchasing as “the active attempt on the part of organisations to purchase the materials and services they require from businesses belonging to individuals, who were formerly disadvantaged by the political and social system”. Nieman, (1997:1) says that the majority of these individuals or firms may be classified as small business enterprises.

The Green Paper on Public Sector Procurement Reform in South Africa (RSA, 1997: 133) describes affirmative procurement as participative programmes aimed at the engagement of SMMEs owned by previously disadvantaged persons and the increasing of the volume of work available to the poor and the income generation of marginalised sectors of society.

2.10.1. The need for affirmative purchasing in South Africa

The need for affirmative purchasing in South Africa came as a way to address a number of problems such as poverty, unemployment and growth. One of the ways of addressing the unemployment problem is through the development of SMMEs. It is recognised that affirmative procurement may be used as an instrument of government policy to assist in the development of SMMEs. Government can do it due to the principle that the power of government procurement can be used to address certain objectives (RSA, 1997: 13, 133)

The RDP describes in more detail, the main problems facing the majority of the population, which brings into perspective the need for affirmative purchasing.

In its problem statement in the chapter on building the economy, the RDP (ANC, 1994:75, 76, 77) states that the South African economy is in a deep-seated structural crisis and as such requires fundamental reconstruction. For decades, forces within the white minority have used their exclusive access to political and economic power to promote their own sectional interests at the expense of black people... the South African economy is also characterised by excessive concentrations of economic power in the hands of a tiny minority of the population.”

“Through the pyramid system and the resultant control over a vast network of subsidiary companies, a small number of very large conglomerates now dominate

the production, distribution and financial sectors... Not only does this create racial and social tension, but it is to be seriously doubted that such high levels of concentration can be economically beneficial.”

“A particular weakness of the economy, aggravated by racist and sexist policies, is the inability to maintain a dynamic small-scale and micro enterprises sector. Smaller firms, especially if owned by black people, can rarely develop productive linkages with the large-scale sector. Most people in the informal sector lack productive and managerial skills plus access to business sites, capital and markets.” “Only a quarter as many women as men hold jobs in the formal sector”...”The agricultural sector and rural economy are also in crisis, as many thousands of black rural households are crammed into tiny plots unable to produce or buy affordable food”.

Given the present disparity of standards of living among the various racial groups, the new Constitution allows government to implement affirmative purchasing to target the development of previously disadvantaged individuals. In order to highlight Section 217(2) there is the Preferential Procurement Framework Policy Act of 1997 and regulations were scheduled to be used as tool to achieve the objectives of the Act. RSA, (2000:1) & RSA, (2001:4). Therefore the use of affirmative purchasing is not a question of whether it should be used, instead it is a matter of how effectively and efficiently it can be implemented.

From the private sector perspective, the discussion for the need of affirmative procurement in South Africa is not without controversy. Purchasing in the private sector evolves around the principles of buying “... the right requirements (quality) in the right time and the right price from the right source, and with delivery at the right place” (Hugo, Van Rooyen & Bandehorst, 1997:9). In managing the purchasing function in the private sector, few purchasing managers can associate SMMEs with the various “rights” in the definition of purchasing above.

2.10.2. Key elements associated with affirmative procurement

New trends and development in procurement and especially logistics management leaves little place for SMME development. These trends are clear from the picture which Morgan and Cruz (1997: 68s3) paints of minority supplier development (or SMMEs) in the private sector in the USA:

- Large firms are reducing the number of suppliers they deal with resulting in minority suppliers being left in the cold;
- Corporations increasingly are relying on preferred suppliers;
- As corporations buy more from fewer suppliers, the average contract size increases putting small firms at a disadvantage;
- Increased use of just-in-time delivery reinforces the trend toward use of preferred suppliers;
- Corporations' requirements of Electronic Data Interchange (EDI) capability puts a financial strain on small suppliers' ability to compete;
- Higher quality standards place minority suppliers at disadvantage;

Nieman, (1997:3) argues that in South Africa the trends in procurement and logistics are the same although not yet at the same level as that of the USA firms.

Badenhorst, (1995:7) believes that the evidently conflicting policies of some organisations may cause purchasing managers to become negative towards the affirmative purchasing programme. On the one hand the procurement manager must eliminate suppliers and limit numbers, while on the other hand they are forced to find as many emerging suppliers as possible. It is doubtful whether the problem areas above can ever be addressed to everyone's satisfaction in today's market driven economy. A few major corporations in South Africa have embarked on programmes to involve SMMEs and in particular black enterprises in the procurement/tendering process. Involving SMMEs will require a mindset change, policy changes and a commitment from top management. The Green Paper, once converted into legislation will however, force many of the unwilling firms in the private sector to embark on such programmes if they wish to contract with the government. Therefore, the research findings of this paper may be of help of those firms setting up an affirmative purchasing policy.

2.10.2. Key elements associated with affirmative procurement

2.10.3. The components of affirmative procurement

The Green paper, (RSA, 1997:133) associates certain key elements to affirmative procurement. It recognises that, procurement may be used as an instrument of government policy; value for money need not be a measure of monetary cost alone;

goods, service and works can be procured both in terms of human resources and technical specifications; and participation of targeted individuals, groups of people, communities and enterprises can be secured by means of a development objective/price mechanism, a human resource specification or a combination thereof.

Another key element is the use of development objective/price mechanism (points scoring tender adjudication procedure) as a means of: measuring tenderers' human resources and financial offer (i.e. value for money); the adjudication of tenders; ensuring that premiums, if any, paid in respect of socio economic or development objectives are within acceptable limits; favouring certain targeted individuals, groups, communities or practices without excluding those who fall outside of such target groups from tendering; and encouraging the private sector to use their skill, knowledge and creativity in responding to socio-economic and development objective challenges in a cost effective manner.

The third key element is the use of human resource specifications in order to: define target groups; set goals, measured in monetary terms, which may be met by engaging the target groups in the pursuit of predetermined socio-economic/development objectives; provide for the measurement of key indicators to ensure that goals may be quantified and audited during the performance of the contract; and set out how goals can be achieved, and the penalties which are to be applied should a contractor fail to achieve the contractual goal.

The fourth key element is the classification of contracts in order to facilitate standardisation in approach and the targeting of business enterprises/local resources.

Lastly, it is the use of the third tier of government in order to effect area bound (specific) targeting relating to marginalised sectors of society in construction projects.

2.10.3. The components of affirmative procurement

Affirmative procurement has two main Legs: Firstly, a development component which ensures that the target group is capable of participation; secondly, a structured

participation component which ensures that the target group is engaged in the provision of goods, services and works. (RSA, 1997:134)

2.10.4. Objectives of affirmative procurement

Affirmative Procurement without resorting to set asides and price preferences can be used in an effective, efficient, transparent and cost effective manner to: Put in place, a programme of affirmative action to address the deliberate marginalisation from economic, political and social power of previously disadvantaged individuals and sectors of society; Develop small businesses, particularly those owned and operated by black entrepreneurs; Provide jobs in a targeted manner on engineering and construction contracts; Increase the number of employment opportunities per unit of expenditure; and promote acceptable labour practices and standards.

(RSA, 1997:134)

Affirmative procurement seeks to ensure that public funds are expended in such a way that all segments of the South African population benefit from such expenditure through job creation and commercial activity. It makes the tender process accessible to the target group without guaranteeing work and links the flow of money into targeted business enterprises with a commitment flow of responsibility.

(RSA, 1997:134)

In the long term it intends to promote development objectives with a focus on human resource development as well as to provide opportunities for skill transfer, and capacity building to acquire experience. It intends to encourage commitment to human resource development and social responsibility programmes within organisations to specifically, redress historical imbalances. It intends to facilitate growth in terms of the efficiency and effectiveness of delivery as well as numbers and size of business owned and controlled by previously disadvantaged individuals; and aims at ensuring that emerging enterprises contribute to the tax base, engage workers who are affiliated to labour associations, adhere to safety regulations and

reflect norms and standards in their business activities associated with those of developed countries. (RSA, 1997:134)

2.11. CONCLUSION

This chapter describes how government through legislation has intervened in the economy to promote the development of previously disadvantaged individuals. The New Constitution is a powerful tool being used by Government to reverse apartheid era legislation which promoted unfair discrimination hampering and retarding SMMEs growth.

In the 1995 Small Business Development Conference, (President's Conference) it was recognised that SMMEs have difficult access to markets. In order to remove obstacles of market access, several policies governing public procurement were drafted. Public Procurement is a tool being used by government since it has a great purchasing power.

Public Sector Procurement has historically been regulated at National and Provincial level through the State Tender Board Act. However, after 1994, each province passed its own provincial Tender Board Act, within their respective provinces. This fact gives more autonomy to the provinces in terms of decision-making and administrative duties.

Local policy is very important and local governments can play a potential role in SMME development. In addition, local intervention can be used to translate national and provincial level policies to local level and in providing support to a range of local-level initiatives. The 1998 White Paper on Local government highlights the importance of the new responsibilities of Local government for local development especially in areas of policy intervention.

A ten point plan was drafted in the 1995 President's Conference, which aims to facilitate public procurement reform in SA. It is a simplified tendering system that seeks to bring SMMEs into the system.

The Green Paper on Public Sector Procurement Reform in South Africa (Notice 691 of 1997) was published, simplifying tendering procedures so as to make tendering more accessible to the previously disadvantaged. The Green Paper specifically recognises that small businesses have in the past been discriminated against by the public sector, which favoured larger and more established businesses. The 10 point plan is embodied in the Green Paper.

At the heart of the proposals for the reform of the procurement process are four key principles: (1) the need to support SMMEs; (2) the attainment and maintenance of good governance; (3) zero tolerance towards corruption and meeting tax obligations and (4) the aim of any principal doing business with the public sector must be to make a profit. There are two reform objectives: socio-economic and good governance. There are two pillars of reform: socio-economic and institutional.

The Municipal systems Bill provides the core principles, mechanisms, and processes that are necessary to enable municipalities to inter alia, move progressively towards the social and economic upliftment of communities.

The Municipal Finance Management Bill intends to regulate financial management in the local sphere of government to require that all revenue, expenditure, assets and liabilities of municipalities and municipal entities are managed efficiently and effectively.

Government policy is governed by the Preferential Procurement Policy Framework Act, 2000. Government intends to regulate tender awards in such a way that preference will be given to promote historically disadvantaged business.

The Preferential Procurement Act affects local authorities in a way that it requires councils to establish their preferential procurement policies within the framework

provided for in the Act. The Government gazette has published the regulations which will enable the achievement of the objectives of the PPFPA, of 2000.

Watermeyer argued that in a transformed Local authority, the procurement environment requires a major change in thinking, attitudes and procedures.

Finally the chapter justified the use of AP in SA. Bandehorst defines AP as the active attempt on the part of organisations to purchase the materials and services they require from business belonging to individuals who were formerly disadvantaged by the political and social system.

Although it goes into contradiction with the private sector and challenges current logistical and procurement global trends, there is a need to implement AP in SA as a way to address problems such as poverty, unemployment and growth. One of the ways to address unemployment is the target of previously disadvantaged SMMEs

Key elements associated with AP are: the use of procurement as an instrument of government policy; the use of a price development objective/price mechanism; the use of human resource specifications; the standardisation of contracts; and the use of third tier of government.

The main objectives of AP are to reverse the effects of economic, political and social marginalisation, to develop SMMEs, to provide jobs, and increase employment opportunities among others.

Given these conditions, that brings the identification of a need to implement AP and the change of the Constitution in favour of previously disadvantaged businesses, chapter 3 discusses the use of government purchasing power to achieve certain socio-economic objectives.