

## CHAPTER 3

### THE CONTEXTUALISATION OF PROCUREMENT STRATEGY FOR PPP

#### 3.1 INTRODUCTION

This chapter deals with the procurement of goods and services using supply chain management (SCM). SCM is analysed in conjunction with the system of tender boards that it has replaced. This chapter is devoted to the economic growth and how the poor as target group for BEE stand to benefit from the envisaged growth. Achieving economic growth in an environment of a lack of requisite skills is looked at in the context of the broader goal of poverty alleviation through BEE.

Procurement of goods and services as an important aspect of wealth creation and for the realisation of BEE imperatives are looked at in the context of SCM. The *Framework for supply chain management* (2003:3-5) states that SCM is the approved system of procurement or ordering of goods and services by public entity or institutions from a private entity or individual(s). What is of importance is how procurement of goods and services is managed and implemented.

The management and implementation of SCM demonstrate the level at which the departments are ready to implement this system and how they can deal with the challenges attendant to its implementation. A number of relative aspects of BEE, ranging from partner selection to procurement procedures that have to be followed are analysed in this chapter. Implementing BEE through PPPs involves a particular responsibility from the officials in the public sector. Officials will be expected to have gained some requisite understanding of procurement through SCM and be expected to comply with the Treasury Regulations (2005) in the management of resources that are earmarked for BEE.

### 3.2 OUTWARD ORIENTED ECONOMY

Sustained growth requires a transformation towards a competitive outward-oriented economy and that as South Africa moves towards the next century, it needs a fast growing and competitive economy with the redistribution of income and opportunities in favour of the poor (*Growth and Redistribution: A Macroeconomic Strategy*, 1996:5). It is, however, not clear how this rationale would be achieved if there are no mechanisms set in place to achieve this. The challenge is further compounded by how *poverty* is defined in the South African context. It seems as if poverty is determined by money, in most cases the dollar. Osmani (2005:37) states that growth depends on the structural changes that entail their impact on employment and wages. Some of the people living in the rural areas who survive on produce from their small backyard gardens and from breeding the chickens, ducks, sheep and goats may not necessarily be poor by their own standard, though they may not have bank accounts or wages. Considering such people poor and in need of poverty alleviation programmes may be a misnomer. The danger in considering such people as poor may result in a situation where resources may be channelled to where they are least required. The definition of *poverty* by dollar standards is obviously problematic in this regard.

The following factors have to happen for the economic growth of 6% per annum to be realized (*Growth and Redistribution: Macroeconomic Strategy*, 1996:3):

- i. accelerated growth of non-gold exports;
- ii. a brisk expansion in private sector capital;
- iii. an acceleration in public sector investment;
- iv. an improvement in the employment intensity; and
- v. an increase in infrastructural development and service delivery making intensive use of labour-based techniques.

All the above will remain difficult to achieve without consideration given to the role that the public sector and the private sector should assume in partnership towards building

sustainable economic development. In spite of the challenges ahead, the Government appears to be willing to tackle them by introducing for example, BEE.

The South African strategy assumes that the economic development, with the realisation of 6% economic growth would automatically translate into job creation (*Growth and Redistribution: A Macroeconomic Strategy*, 1996:6-10). This argument may not necessarily hold true in the current economic discourse. The one difficulty raised here is the propagation of labour-intense and labour-based techniques by unions. This creates a problem, with regard to upward pressure on labour costs per unit of output produced, thus undermining the international competitiveness of the South African industry. The unit price is determined on the basis of inputs that have gone into the production process, such as labour, price of energy source – petrol or diesel, transportation cost and taxes involved, for instance.

In South Africa, for example, filling stations are not automated as it is the case in countries such as Sweden and the United States of America. The salaries of petrol attendants would also have to be considered in the pricing process of petrol and other lubricants, which would in the end, affect the price of products that depend on petrol price for instance. All the above constitute challenge to the price of doing business in South Africa, not only for the well-established enterprises but even for SMMEs. BEE is meant to empower blacks through PPPs. The challenge posed by an unfriendly business environment such as the cost of running business in South Africa may discourage business enterprises from entering the market. In an environment where the private sector is reluctant to enter the market, it will be difficult to achieve PPPs. In order for the private sector to be willing to do business with the state, the conditions for doing business must be reasonable and the potential for making profit must be evident.

The introduction of policies geared towards the realisation of the broad goal of poverty reduction and creation of job opportunity remains laudable. The administrative challenges that have become inextricably linked to the implementation of poverty

alleviation processes need to be identified and dealt with a level of determination by the administration across the three spheres of government.

### **3.3 THE FRAMEWORK FOR THE IMPLEMENTATION OF BEE**

The theoretical framework for the selection of a BEE partner should be clearly spelt out as an administrative tool for ensuring the implementation of good governance. Ernst and Young (2006) spell out the rationale for BEE as being the economic transformation. This being the imperative, the challenge would, as mentioned earlier on be, the developing of framework for its attainment. Jack and Harris (2007:23) maintain that government's earlier intention was not to intervene in BEE with the hope that the market would implement it. Failure of the private sector to engage black participation forced the government to get involved. Jack and Harris (2007:25) state that the key principle in ensuring black participation in the economy is good governance, which among other things includes the highest standard of good corporate governance. Van Niekerk, Van der Waldt and Jonker (2002:115) posit that politics and governance cannot be completely value-free as there is no government that can function effectively and efficiently without a set of directives that will steer it in the direction that the society expects it to move.

Partnering agreement between the GSSC and the Gauteng Provincial Government (GPG) is based on the underlying principle that sufficient freedom is required by both partners to manage their respective functions in an enterprising manner within the agreed mandate and a framework of effective accountability (*Partnering Agreement*, 2004:4). The partnering agreement is envisaged to be in keeping with the provisions of the *PFMA*, (1999) and the *Constitution* (1996).

What has to be taken into consideration when crafting the strategy for BEE, which is an administrative exercise, is to ensure that there is a clear and concise objective of mass participation in the economic transformation rather than empowering the already empowered. Policies and frameworks should be clearly spelt out to support this argument.

The *Promotion of Equality and Prevention of Unfair Discrimination Act*, 2000 (Act 4 of 2000) states in its preamble that although progress has been made in restructuring and transformation of the society and its institutions, systemic inequalities and unfair discrimination remain deeply embedded in the social practices and attitudes, undermining the aspirations of the constitutional democracy.

The preamble states the following basis for progressively redressing the conditions above, which lie in the *Constitution* (1996):

- i. upholding the values of human dignity;
- ii. equality; and
- iii. freedom and social justice in a united, non-racial and non-sexist society.

The *Constitution* (1996) states that Public Administration must be governed by democratic values and principles, which are stated as follows:

- i. a high standard of professional ethics must be promoted and maintained;
- ii. efficient, economic and effective use of resources must be promoted;
- iii. public administration must be development oriented;
- iv. services must be provided impartially, fairly, equitably and without bias;
- v. people's needs must be responded to, and the public must be encouraged to participate in policy making;
- vi. public administration must be accountable;
- vii. transparency must be fostered by providing the public with timely information;
- viii. good human resource management and career development practices; and
- ix. public administration must be broadly representative of the South Africans.

The above principles serve as a yardstick for ensuring administrative justice. It is on this basis that the government is judged by its populace if it delivers on the principles it set out to deliver. The *Promotion of Equality and Prevention of Unfair Discrimination Act*, 2000 (Act 4 of 2000) stipulates as its objectives the following, which is based on section

9 of the *Constitution* (1996). This section stipulates that everyone is equal before the law and that he or she has the rights to equal protection and benefit of the law. The objects of the *Promotion of Equality and Prevention of Unfair Discrimination Act*, 2000 (Act 4 of 2000) are as follows:

- i. the equal enjoyment of all rights and freedoms by every person;
- ii. the promotion of equality;
- iii. the values of non-racialism and non-sexism contained in section 1 of the *Constitution* (1996). This section states that the Republic of South Africa is one sovereign state, democratic state founded on the values of human dignity, non-racialism, supremacy of the Constitution, and universal adult suffrage;
- iv. the prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the *Constitution* (1996). Section 10 of the *Constitution* (1996) states that everyone has inherent dignity and the right to have their dignity respected and protected; and
- v. the prohibition of advocacy of hatred, based on race, ethnicity, gender or religion.

The *Promotion of Equity and Prevention of Unfair Discrimination Act*, 2000 (Act 4 of 2000) serves as an administrative measure to resolve problems of discrimination that have polarised the South African society for many years, hence the need to use legislation to bridge the gap. It was common practice that black people and women were found to be discriminated against to the level where their participation in any form of economic development were attenuated. The same goes for the disabled, whose rights were not protected and their dignity disrespected. It would therefore make sense to see these groups accommodated in BEE programmes. The accommodation of the poor should be central to the elimination of discrimination. Perhaps the new laws should state that there will be no discrimination against anyone on the basis of poverty, which would accommodate all the poor across the racial groups.

Any form of empowerment that assumes the role of business as usual is not empowerment. This measure needs to be approached in a more robust manner. It should be borne in mind that this is the measure that needs to be read in the context of PPP, through BEE as its vehicle. It therefore makes sense to consider procurement processes and note their effect on those that are intended to benefit from them. The previous paragraphs outlined the effect of new social classification, which should be seen to hamper poverty alleviation and equitable distribution of wealth among members of the society. Wealth creation and poverty alleviation should be built on the principle of *ubuntu*, which can further be defined as *being humane*.

In analysing the theoretical framework for the implementation of the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000) through BEE practice, it will be important to look at the question of uniformity of practice across the departments in all spheres of government. South Africa needs an economy that can meet the needs of all citizens in a sustainable manner. In order to achieve this rationale, there has to be a framework to sustain it (*South Africa's Economic Transformation: A strategy for Broad Based Black Economic Empowerment, 2003:3*). The Swedish Government's guidelines for economic reform, a prerequisite for budget support is the implementation of an economic reform programme based on a poverty reduction strategy, an open and transparent budget and budget process, good governance and measures to combat corruption (*Programme Support and Public Financial Management Report SIDA, 2005*).

As mentioned earlier on, there is a growing need for the government to improve the life of the previously disadvantaged individuals by ensuring full participation in the economic activities. In realising this objective; the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000) states that an organ of state must have a preferential procurement policy and implement it within the following framework:

- i. a preference point system must be followed;
- ii. contracts with a rand value above a prescribed amount a maximum of 10 points may be allocated for specific goals as contemplated;

- iii. for contracts with a rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated;
- iv. any other acceptable tenders which are higher in price must score fewer points on a prorata basis, calculated on their tender prices in relation to the lowest acceptable tender in accordance with a prescribed formula;
- v. the specific goals may include: contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability;
- vi. implementing the programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085, dated 23 November 1994;
- vii. any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender;
- viii. the contract must be awarded to the tender who scores the highest points, unless objective criteria in addition to those contemplated justify the award to another tenderer;
- ix. any contract awarded on account of false information furnished by the tenderer in order to secure preference in terms of this Act, may be cancelled; and
- x. goals must be measurable, quantifiable and monitored for compliance.

Managing the implementation of BEE through PPP requires administrative instruments such as score sheets with clear criteria for equitable appointment of bidders. The available criteria for equitable appointment of bidders help in reducing the risk of appointing unqualified bidders to render services. The prescripts to be followed to render a fair and transparent procurement process are: terms of reference (TOR), general conditions of contract (GCC) and quality based selection (QBS). *Practice Note No.3 of National Treasury, 2003* introduces quality and cost based selection (QCBS) as a prescript that could assist in the process of selection of a preferred bidder for a particular service. This will help avoid possible risks that the state may incur in the event of the bridge of contract by the service provider. The managers need to be familiar with



procedures and processes that have to be followed awarding a tender. In the event where the bids are related to building, engineering and construction works, it is recommended that the accounting officers should use the general conditions of contract and standard bidding documents for construction projects issued by the construction industry development board (CIDB) (*Practice Note No. 4 of National Treasury, 2005* and *Practice Note NO.1 of the National Treasury, 2003*).

The *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000) stipulates the discretion of the minister in awarding a tender. The criteria spelt out are:

- i. if it is in the interest of national security;
- ii. if the likely tenderers are international suppliers; and
- iii. if it is in the public interest.

The formula that is used to calculate the points for price in respect of tenders/procurement with a Rand value equal to or above R30, 000 and up to a Rand value of R50, 000 is indicated below. Organs of state may however apply this formula for procurement with a value less than R30, 000 if and when appropriate (*The Supply Chain Management Note No. 3 of 2003*).

$$P_s = 80 (1 - P_t - P_{min} / P_{min})$$

Where:

$P_s$  = points scored for price of tender under consideration

$P_t$  = rand value of offer tender consideration

$P_{min}$  = rand value of lowest acceptable tender.

The use of the above formula assists in determining the appropriate bidder for a particular service to be rendered. The absence of any selection criteria often results in bias and

irregularities. Though BEE should be the overriding principle in awarding tenders, it is important to use this method of selection to ensure fairness and transparency.

The *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000) stipulates that the minister may make regulations regarding any matter that maybe necessary or expedient to prescribe in order to achieve the objectives of this Act. The draft regulations must be published for public comment in the Government Gazette and Provincial Gazette before publication.

In line with the above stipulation, the regulations of the *Procurement Policy Framework Act, 2000* (Act 5 of 2000), were promulgated in the Government Gazette. These regulations will give substance to the contents of the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000). The purpose of this Act is to enhance the participation of historically disadvantaged individuals (HDIs) and small, medium and micro-enterprises (SMMEs) in the public sector procurement system.

The new evaluation system contemplated will be applicable to all tenders, irrespective of the amount. An 80/20 – point system will be applied for tenders up to R500, 000, while 90/10 point system will be applicable for tenders above R500,000 (The *National Treasury Regulations, 2002*). The implication of the formula according to Naidoo (2006) is that while 80% would go towards the price 20% would go towards Reconstruction and Development Project (RDP) goals in respect of realising the imperatives of the historically disadvantaged individuals (HDIs) as required by the law. The evaluation of bids should be carried out in two phases – first the functionality and then the price. The combined percentages allocated should total 100% (The *Practice Note No.3 of the National Treasury, 2003*).

The same applies to the 90/10 point system, depending on the rand value. The Regulation confirms this explanation by stating that the maximum of 80 points will be allocated to the lowest acceptable tender, while tenderers who tendered higher in price will score a lower number of points. A maximum of 20 points will be awarded to

tenderers who tendered for contracting or sub-contracting with HDIs and for achieving specified RDP goals (*The National Treasury Regulations, 2002*).

The goals that need to be achieved for contracting and sub-contracting with HDIs are as follows:

- i. the promotion of South African owned enterprises;
- ii. the promotion of export orientated production to create jobs;
- iii. the promotion of SMMEs;
- iv. the promotion of enterprises located in a specific province, region, municipality or rural areas;
- v. the empowerment of the workforce by standardising the level of skills; and
- vi. the development of human resources and the upliftment of communities (*The National Treasury Regulations, 2002*).

It is envisaged that the implementation of these regulations will enhance the involvement of black businesses in the public tendering system and contribute towards the upliftment of disadvantaged communities. The realisation of BEE through PPP is possible in an environment where the citizenry is assisted in acquiring knowledge and skills required for growing the economy, whether by way of targeting the rural communities or promoting the establishment of small businesses as outlined in the regulations above.

The challenges that have been identified in the implementation of the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000) are as follows:

- i. the Act and its supporting regulations are complex and therefore difficult to implement;
- ii. policies of the Act are not clearly formulated and targets are not set for the introduction of sunset and graduations once targets have been achieved;
- iii. procurement practitioners are not adequately trained in the application of the Act and its associated regulations;

- iv. the costs and outcomes of the Preferential Act are not assessed adequately to evaluate the merits of the system;
- v. there is inadequate provision for capacity building for disadvantaged enterprises to successfully compete for government contracts;
- vi. certain organs of state apply their own practices, instead of the prescribed preference points system; and
- vii. certain departmental policy directives are in conflict with the provision of the Act.

These challenges are regarded as a hindrance towards the achievement of PPP ideals. In light of these challenges being administrative by nature, they may require administrative intervention to be adequately met. The paragraph that follows will focus on the administrative intervention that is applied to address these challenges.

In order to address the administrative challenges, it will be necessary to put in place the necessary checks and balances, which this intervention is about in the first instance. The modern trend in public financial management is that of collective responsibility rather than handing over the responsibility to the chief financial officer (CFO) alone, who is expected to carry roles other than just managing cash flows. Gitman (2003:41) confirms this assertion by stating the following:

*Financial reporting is no longer the primary responsibility of the chief financial officer (CFO). The role of today's CFO, a key member of the executive team, has broadened to include strategic planning and, at many companies, information management. Financial planning, operations, and analysis; treasury operations (raising funds and managing cash); business acquisition and valuation; tax planning; and investor relations are also under his or her control.*

The quest for the contextualisation of the procurement strategy requires the CFO to execute the bulk of the above- mentioned tasks. It is unimaginable how the private sector would be interested in entering into partnership with the public sector in an environment

where there is no planning, no valuation of the project, no analysis or any form of due diligence carried out.

### 3.4 PUBLIC FINANCIAL MANAGEMENT

The national, provincial and municipal budgets and budgetary processes must promote transparency, accountability and the effective financial management of the economy (*Constitution* 1996). This research takes its cue from the field of Financial Management as a sub-discipline of Public Administration. It is against this background that emphasis is put on the management of finances. The management of finances is critical in the process of realising the government goal of poverty alleviation. This paragraph addresses the management of finances and how this can be done in a transparent and accountable manner. Gitman (2003:11-12) separates accounting from financial management in that the former puts emphasis on cash flows and the latter on decision making. An inference can therefore be made that controls and measures as mentioned earlier on in this paragraph resonates Gitman's postulate of accounting. Financial management concerns itself with the *art and sign of managing money* (Gitman, 2003:4).

Fourie (2006: 101) posits that there is a departure from antiquated centralised control of public finances. In the previous system finances were controlled externally by National Treasury. The advent of a new financial management is being introduced. The new system of financial management is characterised by the following, which distinguishes it from the previous system:

- i. devolving responsibilities from the treasury to accounting officers;
- ii. allowing accounting officers to make their own departmental specific instructions; and
- iii. empowering the accounting officers to delegate responsibilities to line managers.

The organisational structure that consists of many strata has the propensity to retard the process of service delivery if not well managed. The case in point is the GSSC which is responsible for the procurement for all departments in the Gauteng Provincial Government, with a number of structures. The GSSC as procurement office will be analysed in Chapter 6 of this study. It will be difficult to achieve poverty alleviation through BEE without well-structured and well defined roles and responsibilities of the employees responsible for the implementation of policies geared towards poverty alleviation.

Fourie (2006:101) states that a modernised system can and will operate effectively if accounting officers:

- i. accept this responsibility and implement the system;
- ii. empower line managers with the necessary delegations and provide training;
- iii. expect line managers to accept all responsibilities, including financial management;
- iv. ensure that the financial component of the department does not become a decentralised treasury by performing the financial management functions on behalf of line managers;
- v. ensure that a detailed financial management system in the department is developed and documented including, among other things:
  - budget processes;
  - reporting systems on expenditure and revenue;
  - cash flow requirements;
  - reconciliation of figures and documentation; and
  - control measures;
- vi. make the line managers responsible for the preparation and control of their budgets as integral parts of the execution of their line management and responsibilities.

The departments cannot procure service if the entire budgets were to be used to pay salaries, for instance. There has to be a percentile split between the budget for the payment of salaries and payment for capital works such as maintenance and repairs. The expenditure in respect of these splits would have to be managed appropriately. The role managers play in ensuring proper management of budgets and cash flows needs to resonate good accounting practice. Departments such as Public Works and Public Enterprise for instance, will be in a better position to ensure that they spent their budgets in a manner that makes it possible for the infrastructural projects that involve BEE companies to happen.

Fourie (2006:102) makes reference to various other functions that were seen as not quite part of financial management, these are:

- i. personnel management;
- ii. provisioning;
- iii. procurement;
- iv. computerised accounting and management system;
- v. strategic planning;
- vi. auditing and accounting;
- vii. constitutional aspects;
- viii. government structures; and
- ix. parliamentary processes.

The introduction of audit committees as well as the oversight role played by the Standing Committee on Public Accounts (SCOPA) serves to expand the broader responsibility of oversight role played by other bodies to minimise the risk of financial mismanagement as well as promoting transparency. The *PFMA*, (1999) regulates the formation of audit committees, which should include people from outside the Public Service. Attendant to the above is the need to spend the budget responsibly and in accordance with the strategic direction of the departments, which among other things, should include how BEE policy imperatives are to be carried out by the national and provincial departments.

The modernised financial management system covers the following concepts (Fourie, 2006:102):

- i. legal framework;
- ii. policy formulation;
- iii. the design of delivery plans;
- iv. the development of administrative structures;
- v. the identification of all necessary resources;
- vi. implementation processes;
- vii. reporting on progress;
- viii. information systems;
- ix. accountability; and
- x. transparency.

The recognition of all the above aspects will create a conducive environment for the implementation of SCM, where the responsibility of the accounting officer is not only to ensure that the SCM teams have received sufficient training in financial management, but also to ensure that there is value for money in every service contracted. The companies that are given tenders should not get these tenders purely on the basis of meeting the BEE requirement. Reference should also be made to the available tools developed in the interest of realising good financial management and procurement, which is in line with the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000), which seek to put into practice the directives herewith explained.

In a programme budget the expenditure information is presented according to programme and sub-programme (The *Gauteng Management Development Programme, 2002:68*). The logic underlying the programme budget is that it reflects exactly what resources are allocated to the implementation of a particular programme and how these resources are to be spent. Simply put, departments use programmes to allocate their vote. It appears various departments will adopt the use of these programmes in accordance with their core business. The customisation of these programmes to the unique functions and roles of



the departments will assist in the allocation of the vote and how the budget is disbursed. Departments such as the National Treasury, for example, would not be expected to have Programme 5 as Further Education and Training as this programme would be specific to the Department of Education. The programmes for the Gauteng Department of Education for example, are arranged as follows:

- i. Programme 1: Administration
- ii. Programme 2: Public Ordinary School Educations.
- iii. Programme 3: Independent Schools
- iv. Programme 4 : Professional service
- v. Programme 5 :Further Education and Training
- vi. Programme 6: Adult Basic Education
- vii. Programme 7 :Early Childhood Development
- viii. Programme 8: Auxiliary and Associated Service.

Programme budgeting assists in the equitable distribution of the voted budget so as to avoid spending the entire budget just on one programme. Managing the budget programmatically will assist not only in ensuring that every area of importance receives allocation but also making sure that every budget allocated meets the priorities for which it has been allocated.

An inference can be drawn that the departmental budget allocations will inevitably affect the number of PPP projects that the individual departments have to carry out. The appropriated budgets would achieve the BEE goals if managed economically, transparently, effectively and efficiently.

### **3.5 PROCUREMENT OF GOODS AND SERVICES**

A PPP becomes evident through procurement of goods and services. The legislative frameworks available serve to create a conducive environment under which a fair process should happen. Sections 33 (1) and (2) of the *Constitution* (1996) provide that everyone

has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights are violated by administrative action has the right to be given written reasons by those who have effected the wrong.

The *administrative action* means any decision taken or any failure to take a decision by an organ of state when exercising power in terms of the *Constitution* (1996) or a provincial constitution or exercising a public power or performing a public function in terms of any legislation (the *Promotion of Administrative Justice Act*, 2000 Act 3 of 2000). It could perhaps be appreciated that administrative processes have not been left to chance as ordinary citizens do have recourse to the law if they feel administratively violated.

The four objectives have been outlined. These were formulated in line with the procurement reforms introduced by government in 1995. The purpose for the reform was to promote the principles of good governance and to introduce preference system to address socio-economic objectives (*Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government*, 2003). The procurement reform was supported by the introduction of a number of legislative measures, including the *PFMA*, (1999) and (the *Preferential Procurement Policy Framework Act*, 2000 (Act 5 of 2000)).

The four objectives of the *Preferential Procurement Policy Framework Act*, 2000 (Act 5 of 2000) strategy are as follows:

- i. promoting uniformity in the processes relevant to the repealing of tender board legislation in the various spheres of government and developing the responsibility and accountability for procurement-related functions to accounting officers/authorities;
- ii. promoting uniformity in the various spheres of government in the interpretation of government preferential procurement legislation and policies, also in the context of other broad-based but related legislative and policy requirements of government;

- iii. replacing the outdated procurement and provisioning practices in government with the supply chain management function and a systematic competitive procedure for the appointment of consultants as an integral part of financial management in government that conforms to internationally accepted best practice principles; and
- iv. introducing parameters for the promulgation of a regulatory framework in terms of the PFMA, (1999) and *Municipal Finance Management Act, 2003* (Act 56 of 2003) to ensure compliance to minimum norms and standards; but in such a manner that the principles of co-operative government are observed.

Though these measures have been introduced to ensure uniformity of practice across departments, it should not be taken for granted that officials in these departments are capable of implementing them. The following section will address the challenges that have been identified in the *Policy strategy to guide uniformity in procurement reform process in Government (2003)*.

The Treasury Regulations (2005) spell out the responsibilities of the accounting officer pertaining to the procurement process. The accounting officer or the accounting authority must ensure that bids are advertised in at least the Government Tender Bulletin for a minimum period of 21 days before closure, except in urgent cases. Care should be taken that there are checks and balances even with urgent cases as this could be misused to favour certain individuals and exclude others who would in line with the pillars below also qualify as beneficiaries of BEE. The proper and successful government procurement process rests upon the five pillars outlined, which are stated as follows:

- i. value for money;
- ii. open and effective competition;
- iii. accountability and responsibility;
- iv. equity; and
- v. ethics and fair dealing (*The National Treasury General Procurement Guidelines, 2009:3*).

Procurement provides value for money if it avoids unnecessary costs and delays for both the state and suppliers. The open and effective competition pillar refers to a framework of procurement laws, policies, practices and procedures that are transparent. The procurement is ethical and fair if all parties involved in the procurement process deal with each other on a basis of mutual trust and respect. It is in this respect where bribery, cronyism and nepotism are to be discouraged (*The National Treasury General Procurement Guidelines, 2009:1-8*).

The accountability and reporting aspect of procurement refers to a situation where the heads of procurement and senior procurement directors are accountable to heads of departments for high level management and co-ordination. *Equity* is explained in the context of the General Procurement Guidelines as the application and observance of government policies which are designed to advance persons or categories of persons disadvantaged by unfair discrimination. In the context of this study, these will be blacks, women, the youth and the indigent in the rural areas (*The National Treasury's General Procurement Guidelines, 2009:8*).

The realisation of BEE through PPP will be difficult in an environment characterised by gross mismanagement of procurement processes as well as corrupt practices. The procurement process plays a pivotal part in wealth creation and equitable wealth distribution, as long as that happens in an environment of mutual trust and in compliance with all the pillars outlined above. SCM as a mode of procurement is aimed at serving as statement of the Government's commitment to a sustainable small, medium and micro businesses which will add to the wealth creation and the enhancement of economic and social well-being of all South Africans who fall within the disadvantaged category.

The challenge here may be that for those who may not have internet or electricity it may be difficult to access information that would assist them to benefit from the advertised tenders for them to bid. Therefore, it may become difficult for the designated groups to be considered favourably for services advertised. Similarly, the language that is used to

publish these tenders pose serious problems in that some of the potential bidders may not be competent in either of the languages used, which often is English or Afrikaans.

### **3.6 PRINCIPLES AND PHILOSOPHIES OF SUPPLY CHAIN MANAGEMENT**

SCM plays a major role in the realisation of BEE through PPP. Lombard, (2005) during the seminar on senior management network, pointed out that PPP is about the following:

- i. output-based;
- ii. procurement of services;
- iii. private party is service provider; and
- iv. institution is contract manager of service.

Lombard (2005) goes further defining *PPPs* as consisting of a contract between the public sector (institution) and private sector (private party), which makes the agreement legal. The question would be how this agreement is initiated and concluded. There will have to be a service level agreement (SLA), as it is the case with the GSSC and its departments in the GPG. It is envisaged that the SLA will include areas of risk, delivery date, value for money, determination of roles, procedures and responsibilities (*Partnering Agreement*, 2004:4). The private party performs an institutional function and /or uses state property in accordance with output specifications. Substantial transfers of financial, technical and operational risk are directed to the private party, in terms of the SLA. The private party benefits through unitary payments by an institution and/or user fees. An institution retains the major role as the main purchaser of the services or as the main enabler of the project.

The criticism of BEE has been voiced from within sections of Government. Contained in these criticisms is the narrow focus on empowerment reality, where emphasis is on equity transaction and not other equally important dimensions of empowerment such as skills development (The Business Map Foundation, 2007:11). It should however be mentioned

that there has been a remarkable progress in the area of BEE in South Africa, though the challenge would be to ensure sustainability.

The black controlled companies need to make concerted effort to employ black staff, procure from black suppliers, develop black staff's skills, develop other black enterprises and so forth (Business Map Foundation, 2007:19). It seems as if the foregoing remains a distant possibility given the current alleged practice as disparaged by labour organisations and other sectors of the society.

The procurement processes succeed where there are administrative checks and balances. It is therefore vital to look at philosophical principles guiding these processes. It can further be argued that the implementation of SCM in the absence of a particular philosophy will be problematic. The employees in general and SCM functionaries in particular should adopt the principles of *batho pele* (people first) and the philosophy of *ubuntu* (humanity).

It is a requirement in terms of SCM that all parties comply with the highest ethical standards in order to promote mutual trust, respect and an environment where business can be conducted in a fair and reasonable manner and with integrity (*SCM Government Notice No. R 1379*, section 5.1). All employees associated with SCM, particularly those dealing directly with suppliers or potential suppliers are according to *SCM Government Notice No. R1379*, required to:

- i. recognise and deal with conflict of interest or the potential thereof;
- ii. deal with suppliers even-handedly;
- iii. ensure that they do not compromise the good standing of the state through acceptance of gifts or hospitality;
- iv. be scrupulous in their use of public property;
- v. provide all assistance in the elimination of fraud and corruption; and

- vi. adhere to instructions issued by the accounting officer/authority as well as the code of conduct for supply chain management officials/employees issued by the National Treasury.

It will be critical to ascertain if during the process of procurement the following requirements are taken into consideration; advertising, bid evaluation committee, tax clearance certificates. To address the challenges outlined above there has to be policy intervention that provides guidelines for the authorities in the different spheres of government. The introduction of an integrated SCM will provide the opportunity to address the outdated procurement and provisioning processes in the government. The system of SCM assists in resolving the inefficiencies in procurement processes, contracting and inventory/asset management. It further seeks to do away with the old tender board system.

SCM is an integral part of financial management, which seeks to introduce internationally accepted best practice principles, whilst at the same time addressing government's preferential procurement policy objectives. The process of SCM links to the government's budgetary planning processes and at the same time focuses strongly on the outcomes of actual consultants. The development of a systems master plan for an integrated financial management system that conforms to the requirements of the PFMA is necessary (*The Policy strategy to guide uniformity in procurement reform process*, 2003:20).

The purpose of Financial Management and systems is to manage and regulate Government supply-chain processes, implementing and maintaining standardised financial systems and coordinating the implementation of the *PFMA*, (1999) and related capacity-building initiatives (*The National Treasury: Strategic Plan, 2005 -2008* :51). The question is whether there is sufficient capacity within the Public Service to manage finances and co-ordinate the implementation of PPP through BEE in line with what has been stipulated above. The introduction of new terms such as *throwing the javeline*, which means starting a business while still employed in the Public Service without

declaring one's interest poses a serious challenge and in this case the former minister of Public and Administration, Moleketi (2008) called for a cooling-off period. This call indicated that in spite of the available policies and laws, there still remain gaps in the administration and implementation of SCM in a transparent and ethical manner.

The SCM seeks to breach the gap between traditional methods of procuring goods and services and at the same time addressing procurement related matters that are of strategic importance. The introduction of the principles of SCM will require the accounting officer and accounting authorities to extract accurate commercial and other relevant information for the purposes of measuring the achievement of the Government's procurement objectives (*The Policy Strategy to Guide Uniformity in Procurement Reform Process in Government*, 2003:19).

### **3.7 SUPPLY CHAIN MANAGEMENT IN PRACTICE**

The introduction of an integrated SCM function intends to address the division between the current and outdated procurement function and provisioning processes in the government, which causes the present system to be inefficient in its method of procurement, contract management, inventory/assets control and obsolescence planning. In order to understand the outdated procurement processes, it will be necessary to briefly look at what these actually were and how it functioned in relation to the present system (*The Policy Strategy to Guide Uniformity in Procurement Reform Processes in Government*, 2003:4). BEE through PPP is realised through equitable procurement procedures such as SCM. The SCM is an administrative procedure that makes it possible for procurement to be fair, economical and transparent. The SCM as an integral part of financial management seeks to introduce internationally accepted best practice principles and at the same time address the preferential procurement policy objectives (*Supply Chain Management Manual*, 2004:28).

*The Framework for Supply Chain Management* (2003) section 4 (1) states that: "The accounting officer or accounting authority of an institution to which these regulations



apply must establish a separate supply chain management unit within the office of the institution's chief financial officer, to implement the institution's supply chain management system." The setting up of supply chain management functions requires competence from both the accounting officer in terms of selecting members of the team as well as the members themselves.

The roles of the accounting officer are spelt out as that of training officials and procurement of goods and services. The accounting officer must develop and implement an effective and efficient supply chain management system (*The Treasury Regulations, 2005, section 16(A)(3) to 16(A)(6)*). This will be used to acquire goods and services and the disposal and letting of assets. The SCM function must be fair, equitable, transparent and cost effective. Compliance with the *Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)* is highly preferable. SCM should further be consistent with the *Broad Based Black Economic Empowerment Act, 2003 (Act 53 of 2003)* in terms of providing the following:

- i. demand management;
- ii. acquisition management;
- iii. logistic management;
- iv. disposal management;
- v. risk management; and
- vi. regular assessment of supply chain performance.

The above elements of SCM are discussed in detail in the following paragraph to show how they are related to the implementation of PPP.

### **3.7.1 THE ELEMENTS OF GOVERNMENT'S SUPPLY CHAIN MANAGEMENT PROCESSES**

In order for SCM to be implemented, there needs to be a variety of elements that have to be adhered to. These are: demand management, acquisition management, logistic

management, disposal management and supply chain performance. These elements are analysed in the following sections.

### 3.7.2 DEMAND MANAGEMENT

The demand management is the beginning of the SCM where the particular needs are determined and affordability assessment conducted in accordance with the aspects of value for money and the availability of budget for the goods or service procured (The *Policy Strategy to Guide Uniformity in Procurement Reform Process* (2003:21). The demand management is defined as a cross-functional exercise that brings the procurement official closer to the end-user (*Supply Chain Management Manual*, 2004:33). The following functions re expected to occur:

- i. understanding future needs;
- ii. identifying critical delivery dates;
- iii. determining the frequency of needs;
- iv. linking the requirements to the budget;
- v. doing an expenditure analysis (based on past expenditures);
- vi. determining the specifications;
- vii. doing a commodity analysis (checking for alternatives); and
- viii. doing an industry analysis (The *Policy Strategy to Guide Uniformity in Procurement Reform Process*, 2003:21).

This is a cross-function exercise that seeks to bring the supply chain practitioner closer to the end-user so as to ensure that the value for money is not compromised. Demand management helps in ensuring the equitable and cost-effective procurement process (Partnering Agreement, 2004:4). Critical to the agreement between the GSSC and the Gauteng Department of Education has been the delivery dates as it has not always been the case that GSSC complied with this commitment. A number of complaints were sent through to Radio 702 (2009), schools and hospitals complained about the delay in delivery of goods ordered and the vendors complaining about the delay in payments and

threatening to stop deliveries. It is for this reason that the contextualisation of procurement strategy aimed at partnering with private companies will be of assistance in ensuring that the challenges at all service delivery points are identified and sorted out.

### 3.7.3 ACQUISITION MANAGEMENT

Acquisition management is the stage where goods and services are acquired through procurement process. The acquisition management is a process that entails strategic sourcing, which is a systematic approach to managing the acquisition of goods and services which achieves the lowest total cost of ownership and matches the internal customer's needs with market place capabilities (*Supply Chain Management Manual, 2004:38*). The approach is used in establishing and managing a negotiated agreement for a particular commodity. The following processes take place under this phase:

- i. the preferential procurement policy objectives are identified that could be met through the specific contract;
- ii. the strategy of how the market is to be approached is determined;
- iii. applicable depreciation rates are determined;
- iv. the total cost of ownership (TCO) principle is being applied, e.g. life cycle cost, inventory carrying cost;
- v. the bid document is compiled, attaching all necessary required documents and giving conditions *etc.*;
- vi. the bid evaluation criteria are determined;
- vii. bids would be evaluated and recommendations tabled;
- viii. contract documents are compiled and signed;
- ix. contract administration is done; and
- x. contract information is used to kick-start the logistics management process (*Policy Strategy to Guide Uniformity in Procurement Reform Process, 2003:22*).

The GSSC in the Gauteng Department of Education has through the process of bidding, contracted Edu- Solution to supply learning support materials (LTSM) to all schools in Gauteng. It seems as if customer need requirements have been met in because the company has just been appointed to continue supplying LTSM for the second term.

Procurement seems to form an important aspect of PPP throughout the different spheres of government. It will be difficult for procurement to be done without following a particular process and procedures that require the management to be held accountable.

### **3.7.4 LOGISTICS MANAGEMENT**

Logistics management is a phase in the procurement of goods and services where, for instance, the GSSC with the powers vested in it, sets out procedures to be followed by users and procurement line structure in acknowledging that the needs have been met, by submitting the Goods/Services Receipt Note referred to as *RLS 02 (Supply Chain Management Manual, 2004:44)*. The following functions, among others; will have to be performed for stock and inventory (*Supply Chain Management Manual, 2004:44*):

- i. coding of items;
- ii. setting of inventory levels;
- iii. placing of orders;
- iv. receiving and distribution of material;
- v. managing stores/warehouse management;
- vi. expediting orders;
- vii. managing transport; and
- viii. managing vendor performance.

The departments have to exercise caution in respect of control and management of inventory. Lack of proper control may result in payment made for services not rendered. Logistics management is an important component of managing risk and accounting for service rendered. PPP is about service provision and therefore requires control and

supervision to avoid unethical practices and non-compliance with the provision of the *PFMA*, (1999).

### **3.7.5 DISPOSAL MANAGEMENT**

*Disposal management* is the process where goods considered obsolete are checked to determine whether they can be reused. The management of obsolete goods is important so as to avoid procuring goods at a high cost when there is still stock available (*Supply Chain Management Manual*, 2004:45). In managing obsolete goods, the following requirements are important:

- i. obsolescence planning or depreciation rates per item required should be calculated;
- ii. a data-base of all redundant material should be kept;
- iii. material should be inspected for potential re-use;
- iv. a strategy should be determined of how the items are going to be disposed of; and
- v. executing the physical disposal process.

Considering the above requirements and ensuring that they are implemented will assist in the control of LTSM where books issued to children are returned in good usable condition to avoid unnecessary expenses. PPP through BEE should not be implemented in a manner that compromises standard and quality of services rendered. Quality will be compromised when BEE company supplies equipment of which the life span is by far below the normal life span of an item delivered.

The disposal of moveable assets is the final process when an institution needs to do away with unserviceable, redundant or obsolete assets (*The Government Notice No.R.1379* section 3.1). The accounting officer should appoint a disposal committee at each regional/sub-office to make recommendations with regard to the disposal of such assets.

The moment the disposal of assets by the accounting officer has been approved, any of the following methods may be considered:

- i. transfer to another institution;
- ii. transfer to another institution at market value;
- iii. transfer to another institution free of charge;
- iv. selling per tender or auction; or
- v. destroying such assets.

### **3.7.6 SUPPLY CHAIN PERFORMANCE**

Supply chain performance is where the monitoring process takes place (*The Government Notice No.R1379*). Undertaking a retrospective analysis, a determination is made whether the proper process is being followed and whether the desired objectives are achieved. The issues that need to be reviewed are:

- i. achievement of goals;
- ii. compliance to norms and standards;
- iii. savings generated;
- iv. stores efficiency;
- v. cost variance per item;
- vi. contract breach *etc.*;
- vii. cost-efficiency of the procurement process (*i.e.* the cost of the process itself);
- viii. whether supply chain objectives are consistent with the Government's broader policy focus;
- ix. the material construction standards become increasingly aligned with those standards that support international best practice;
- x. that the principles of co-operative governance as expounded in the *Constitution* (1996) are observed, according to Section 41 (1) being:
  - a) preserving the peace, the national unity and the indivisibility of the Republic of South Africa;

- b) securing the well-being of the people of the Republic of South Africa;
  - c) providing effective, transparent, accountable and coherent government for the Republic of South Africa as a whole;
  - d) being loyal to the Constitution, the Republic of South Africa and its people;
  - e) respecting the constitutional status, institutions, powers and functions of government in the other spheres;
  - f) not assuming power or function except those conferred on them in terms of the *Constitution* (1996);
  - g) exercising their powers and performing their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and
  - h) co-operating with one another in mutual trust and good faith.
- xi. reducing of regional economic disparities.

The above principles emphasise transparency, effectiveness, co-operation and accountability. These principles when taken cognisance of, would make it easier for the Government to realise the broad goals of poverty alleviation through BEE. The cooperation spoken about refers to co-operation that takes into consideration the geographical and institutional integrity of other spheres of government. Some of the elements mentioned above are discussed in Chapter 6 of this study.

### **3.8 DEPARTMENTAL READINESS AND IMPLEMENTATION CHALLENGES.**

Preparing the departments for the new concept of SCM is essential because the new procurement processes involve a number of systems to ensure accountability (*The Policy Strategy to Guide Uniformity in Procurement Reform Process in Government*, 2003:45). These responsibilities entail the setting up of tender boards in accordance with the relevant treasury guidelines. Departments require capacity to be able to procure goods and services. These would require putting up necessary systems and structures.

Accounting officers, who are the heads of departments in respect of provinces, directors general for national departments and municipal managers in respect of municipalities, must be supported by the relevant treasury, which should issue best practice notes to counter any perceived deficiencies in departments. Where tender boards still exist, they should be expected to work closely with their respective treasuries.

Other than giving effect to the *PFMA*, (1999), the key objective of SCM would be to establish the following:

- i. chief financial officer structures;
- ii. clear lines of authority and accountability;
- iii. performance criteria to minimise risk much quicker and efficiently; and
- iv. better asset and inventory management.

To make sure that all treasuries act in unison, the National Treasury will draw up a checklist to ensure that all relevant aspects are addressed. The process will be phased in gradually with the implementation monitored regularly to ensure success.

It appeared, according to communication with Naidoo (2005), the Director in the National Treasury, that not all spheres of Government had fully implemented the system of SCM, as municipalities were late starters in this respect and that local Government structures only started implementing SCM in October 2005. According to Naidoo (2005) it would have been difficult to determine compliance at that stage. He pointed out that it appears that capacity remained a major challenge to some of the spheres of government.

In order to prepare departments sufficiently for SCM, there has to be a treasury directive that requires all departments to have accounting officers/authorities that assume full responsibility for SCM. This will require appropriate planning and management to ensure success. Depreciation rates linked to various categories of goods/assets including buildings and roads have to be accounted for. It will be difficult for the departments to operate this new concept without proper training of staff. The purpose of training should



be that of providing skills for sustainable growth. It is against this background that the government has initiated skills-oriented programmes such as JIPSA.

Jack and Harris (2007:53) maintain that most companies looking to fill empowerment positions frequently show preference to Indian people because they have higher levels of education. Preference for people of Indian descent may not necessarily be the only hurdle. The funding of black empowerment initiatives may pose challenges in respect of high-risk profiles these initiatives may have. Jack and Harris (2007:8) point out that sustainability of the funding mechanism used in BEE deals poses a challenge as most black people did not have sufficient capital or collateral.

Any form of irregularity and unlawful practices stifles the realisation of poverty alleviation through BEE. This may include *fronting* a practice where white-owned companies use black employees as board members for the sake of acquiring tenders. This practice has been referred to as *rent-a-black* practice, which is commonly associated with fronting. *Rent a black* is a concept used to refer to a particular practice where white-owned companies hire blacks in a higher position simply to meet the affirmative quota. Often blacks hired to these positions do not need to meet any job specification or possess relevant qualifications; as a result they get paid meager salaries. For entities to be BEE compliant, they need to conduct some feasibility study.

### 3.9 CONCLUSION

The study of the management of public finance plays a pivotal role in ensuring that the administrative management of Government policies pertaining to finances is well taken care of. Compounding the challenges of PPP through BEE and BBBEE is a lack of common understanding across policy-makers, in respect of who should actually benefit from these measures. Perhaps a lack of understanding crops up around the area of implementation, though there seems to be uniformity in respect of what has to be done to alleviate poverty among the poor rather than enriching the enriched.

The question that has to be raised is whether there is indeed a common understanding of the manner in which resources through PPP should reach those who really need them, rather than those whose pursuit is power or fame. Critical to these processes is uniformity of application of the principles of the *Preferential Procurement Policy Framework Act, 2000* (Act 5 of 2000). The Act in itself is explicit in terms of what has to be done as outlined in the previous paragraphs. The challenge here remains how to conceptualise the administrative tool without which its implementation would be difficult. Tools such as supply chain management are critical in the implementation processes of the new procurement system, which came to replace the outmoded state tender boards. Supply chain management by itself requires a lot of training if it were to be implemented correctly.

The implementation of PPP-related policies requires commitment and selflessness from both policy-makers and policy-implementers. In Chapter 5 of this study, the aspects of code of conduct and ethics are addressed. Therefore, it will be essential to look at how defaulters are dealt with. Statistical representation of actual cases of fraud and the process of prosecution are presented in this chapter, which serves to provide information whether the administrative processes of dealing with defaulters are effective.

Against this background a determination can be made if indeed the government policies on poverty alleviation are effective and have been sufficiently internalised by those who are responsible to implement them. The chapter that follows analyses the construct of *PPPs* and how through the system of SCM these can be used for BEE.