



the dr&pw

Department:
Roads and Public Works
NORTHERN CAPE PROVINCE
REPUBLIC OF SOUTH AFRICA

**DEPARTMENTAL POLICY FOR CREATING
AN ENABLING ENVIRONMENT FOR
CONTRACTOR DEVELOPMENT WITHIN
THE NORTHERN CAPE PROVINCE**

4

TABLE OF CONTENTS

Contents	Page
1. DEFINITIONS.....	3
2. INTRODUCTION.....	4
3. REGULATORY FRAMEWORK.....	7
4. TARGETED PROCUREMENT STRATEGY.....	14
5. PRINCIPLES, VALUES AND PHILOSOPHY.....	16
6. SCOPE AND APPLICABILITY.....	18
7. PROCEDURES.....	18
8. ROLES AND RESPONSIBILITIES.....	26
9. RESOURCE IMPLICATIONS.....	28
10. MONITORING AND EVALUATION.....	32
11. POLICY REVIEW.....	32
12. APPROVALS AND RECOMMENDATIONS.....	33

5/

1. DEFINITIONS

APP	Annual Performance Plan
AsgiSA	Accelerated and Shared Growth Initiative for South Africa
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
CETA	Construction Education and Training Authority
cidb	Construction Industry Development Board
"Department"	Department of Roads and Public Works, Northern Cape Province
DBSA	Development Bank of South Africa
DRPW	Department of Roads and Public Works
DTI	Department of Trade and Industry
ECDP	Emerging Contractor Development Programme
EPWP	Expanded Public Works Programme
FET's	Further Education and Training institutions
GIAMA	Government Immovable Assets Management Act, Act No. 19 of 2007
HOD	Head of Department
IP	Infrastructure Plan
Jipsa	Joint Initiative on Priority Skills Acquisition
JV's	Joint Ventures
KPA's	Key Performance Areas
MDGs	Millennium Development Goals
MOU	Memorandum of Understanding
NIMS	National Infrastructure Maintenance Strategy
NQF	National Qualifications Framework
OP	Operational Plan
PDI's	Previously Disadvantaged Individuals
PFMA	Public Finance Management Act, Act No. 1 of 1999
PGDS	Provincial Growth and Development Strategy
PPPFA	Preferential Procurement Policy Framework Act, Act No. 5 of 2000
PPR	Preferential Procurement Regulations, 2011
PSC	Project Steering Committee
RDP	Reconstruction and Development Programme
SACPCMP	South African Council for the Project and Construction Management Professions
SAFCEC	South African Federation of Civil Engineering Contractors

81

SAQA	South African Qualifications Authority
SAWIC	South African Women in Construction
SCM	Supply Chain Management
SEDA	Small Enterprise Development Agency
SETA	Sector Education and Training Authority
SMME's	Small, Medium and Micro Enterprises
SMS	Senior Management Services
SOW	Scope of Work
UIF	Unemployment Insurance Fund
VAT	Value Added Tax

2. INTRODUCTION

2.1 Background

The Department of Roads and Public Works is mandated to deliver an effective and efficient Contractor Development Strategy to promote and facilitate socio-economic growth and development in the Province. Over the past years there has been a drive by the Department to ensure that the delivery of infrastructure within the Province is re-prioritised in order to ensure that on an annual basis, the access to previously disadvantaged rural citizens is improved.

It is therefore logical that the transformation of infrastructure service delivery is also used as a change platform for the transformation of the construction industry overall. Currently, most of the previously disadvantaged contractors are on the lower grading designations within the CIDB Register of Contractors, which limits their participation within higher order infrastructure projects where they would be able to grow both their technical and financial competencies.

Despite significant progress since the establishment of a democratic government in 1994, South African society is still characterised by racially based income and social service inequalities. Consequently, the vast majority of South Africans remain excluded from ownership, control and management of productive assets and from access to training in strategic skills.

The construction sector, which consists of different disciplines with a proliferated client and supplier base, performs an indispensable role in the economy of South Africa. Apart from a limited number of equity transactions, the sector still continues to reflect vast inequalities in ownership and sustainability. The Registrar of Contractors by the CIDB shows a high proliferation of entry level contractors, i.e. Grade 1 and Grade 2 contractors. Most of these are by females and the previously disadvantaged in general, and there are not many opportunities for these contractors to become

sustainable enterprises.

The success of contractor participation in the construction industry depends on a supportive and enabling contractual environment. To create an enabling contractual environment constraints and restrictive practices, which create barriers for contractor participation and development in the construction and building industries, have to be identified and removed. Consequently, the Department has identified the need to have a structured contractor development programme in place and is committed to reserving projects to contractors on the programme. Because contractor development is fragmented with limited opportunities to provide support and is associated with extreme frustrations among all stakeholders, meaningful development can only be provided in the form of a structured programme.

The Department, together with other client departments and statutory bodies, have different programmes of action for addressing issues of B-BBEE within the construction industry and the provincial government in general, and through the need to implement a Contractor Development Strategy, there exists also the need to develop a broad-based integrated approach that would involve all stakeholders, but specifically the community and contractors.

The development of this policy therefore seeks to deal with the challenges of contractor development within a holistic approach to ensure sustainability of the market entrants through the provision of enabling support systems that do not necessarily depend on one client body. The enabling support systems must provide access to information, finance and partnerships through networking. These systems must strive towards achieving an integrated platform where services to promote B-BBEE and economic opportunities in general can be made available. The development of a database of contractors will be crucial in kick-starting such a development programme.

The Department will also need to staff a responsible Directorate appropriately as it will be responsible for information dissemination, storage of accurate programme data and direct interaction with the beneficiaries. A similar database could be used by other organisations to access contractors as well.

2.2 Purpose

The primary purpose of this policy is to address social and economic deliverables based on the implementation of procurement strategies and procedures as a management strategy.

This policy is based on the premise that public procurement lies within the ambit of existing political policy directives insofar as these require that procurement decisions are not to be guided exclusively by commercial criteria. Although there exists tension in the relationship between the political policy directives and the principle of value for money (cost-effectiveness), this policy recognises that

affirmative procurement has been integrated into the right to equality in the Constitution. Although there are furthermore time and cost implications associated with targeted, affirmative procurement, this policy furthermore recognises that these implications are integral to development in the Northern Cape and therefore the Department hereby confirms that procurement is to be used as a developmental policy tool. Therefore, as far as the tender selection process is concerned, not just price, but a contractor's ranking in respect of the contractor's achievement of the government's stated socio-economic objectives plays a significant role.

Targeted procurement processes will, among other things, enable the Department to effectively:

- create opportunities for targeted communities;
- relieve poverty;
- develop and assist an additional pool of new contractors;
- redefine the patterns of business ownership;
- ensure that capacity building is integrated within infrastructure delivery.

The framework within which this policy has been developed, seeks to promote a culture of infrastructure planning and implementation that will ensure that the growth and sustainability of contractors is not incidental, but becomes one of the high priority performance areas that is driven with integrity and care.

The Contractor Development Strategy, which is to be developed in line with this policy, must give rise to the development of guidelines, through a Contractor Development Management Plan, which must be consistent with the construction industry's best practices and standards for uniformity. It must also provide a basis for the creation of co-operation between the Department and various stakeholders, such as:

- Target beneficiaries (contractors incorporating women, youth and people living with disabilities).
- Other client bodies including the CIDB and CETA.
- Financial institutions (government and private) e.g. commercial banks and the DBSA etc.
- Established industry organisations e.g. SAFCEC, SAWIC, etc.

The corresponding strategy must also focus mainly on previously disadvantaged contractors not beyond the CIDB grading designation 7GB and 7CE. The level of interventions or assistance provided to contractors will be determined by the Department, based on the project requirements.

9

3. REGULATORY FRAMEWORK

This policy describes the pro-active involvement and alignment of the Provincial Government with Government and National initiatives and presents a sustainable development environment for SMME's in the built environment. The Contractor Development Strategy that will be implemented in terms of this policy needs the support and buy-in of all provincial departments in order to become effective to the benefit of all departments and all suppliers in the Provincial Government's endeavours to stimulate sustainable empowerment and service delivery.

This policy will also be embodied in a Contractor Development Strategy, which will describe the programmes that will be available to all Departments.

Various pieces of legislation and developmental frameworks relating to the managing and controlling of procurement processes exist. The Contractor Development Strategy must also be structured in such a manner that it complies with the objectives and provisions of legislation.

3.1 The Constitution of the Republic of South Africa Act (Act No. 108 of 1996)

Section 217 of the 1996 Constitution defines how procurement matters should be handled. It further provides for the advancement and protection of PDI's. Section 217 states the following:

"Procurement

- (1) *When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods and services, it must do so in accordance with a system, which is fair, equitable, transparent, competitive and cost-effective.*
- (2) *Sub-section (1) does not prevent the organs of state or institutions referred to in that sub-section from implementing a procurement Policy providing for-*
 - a. *Categories of preference in the allocation of contracts; and*
 - b. *The protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.*
- (3) *National legislation must prescribe a framework within which the Policy referred to in sub-section (2) may be implemented."*

3.2 The Construction Industry Development Board (CIDB) Act (Act No. 38 of 2000)

The CIDB is mandated *"to provide strategic leadership to stakeholders and stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry's*



enhanced role in the country's economy." The CIDB currently keeps and maintains the construction registers of contractors and projects. They play a major role in ensuring that client departments adopt best practices which are auditable even within the contractor environment. The CIDB is also responsible for the issuing of procurement practice notes which the departments dealing with construction industry projects are expected to adhere to, in order to ensure standardization of public sector procurement across the country.

3.3 The Broad-Based Black Economic Empowerment (B-BBEE) Act (Act No. 53 of 2003), as amended

B-BBEE provides a legal framework for the promotion of Broad-Based Black Economic Empowerment. The Act provides for the gazetting of transformation charters and the issuing of generic and sector Codes of Good Practice which are a vehicle for the advancement of black economic empowerment. The construction sector finalised its Transformation Charter in January 2006. The charter aims to set the targets for the advancement of B-BBEE within all elements of the Codes.

3.4 The Preferential Procurement Policy Framework Act (PPPFA) of 2000 (Act No. 5 of 2000) and the Preferential Procurement Regulations (PPR), 2011

The PPPFA and PPR is a legal framework for public sector procurement. This policy document is introduced in line with constitutional and wider policy frameworks for supply chain management. The basic objectives of this legislation are to operate effectively and efficiently in order to obtain the highest possible output for the lowest possible use of resources or input. It is envisaged that this legislation will give rise to improved procurement provisions which will enable delivery of the set targets within the B-BBEE codes of good practice.

3.4.1 The 80/20 and the 90/10 preference point system

For procurement contracts with a Rand value equal to or below R1 000 000,00 the 80/20 preference point system must be used to evaluate contracts.

3.4.2 For procurement contracts with a Rand value above R1 000 000,00 the 90/10 preference point system must be used to evaluate the contracts. The evaluation should be carried out in two phases; first for functionality and then for price.

81

3.4.3 Calculation of points for price formulae for the calculation of points for price

Formulae for the calculation of points for price:

- The 80/20 preference point system:

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

- The 90/10 preference point system:

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

WHERE

Ps = Points scored for price of bid/contract under consideration.

Pt = Rand value of bid/contract under consideration.

Pmin = Rand value of lowest acceptable bid.

3.4.4 Calculation of preference points

A maximum of 20 points may be awarded to a contractor for attaining the B-BBEE status level of contributor in accordance with the table below when the 80/20 preference point system is used.

B-BBEE Status Level of Contractor	Number of points according to the 80/20 system
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contractor	0

[Handwritten signature]

3.4.5 A maximum of 10 points may be awarded to a contractor for attaining the B-BBEE status level of contributors in accordance with the table below when the 90/10 preference system is used.

B-BBEE Status Level of Contractor	Number of points according to the 80/20 system
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contractor	0

Points scored for attaining the B-BBEE status level contributor must be added to points scored for price to arrive at a final score.

The contract should be awarded to the bidder scoring the highest points, unless objective criteria justify the award to another bidder.

Information relating to the evaluation and recommendations concerning awards should not be disclosed to the bidders / consultants or other persons not officially concerned with the process until the successful bidder is notified.

Though this Act caters for preference, contracts cannot simply be awarded to bidders; an element of competition must be present, albeit with preference.

Furthermore the Department may apply the principle of allocation of construction works contracts for developmental objectives to contractors enrolled within the contractor development programmes.

3.5 The Public Finance Management Act (PFMA) of 1999 (Act No. 1 of 1999), as amended by Act 29 of 1999

The purpose of the PFMA is to regulate financial management in the national and provincial spheres of government; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with financial management in government; and to provide for matters connected therewith.

A contractor development programme can entrench compliance by means of an accountable, open and fair programme that is managed in terms of an approved policy and corresponding Strategy, and is monitored and evaluated regularly.

3.6 The Skills Development Act (Act No. 97 of 1998)

The Skills Development Act provides for the creation of a SETA for each of the various economic sectors. The CETA is responsible for training in the construction industry.

Structured learning programmes, e.g. learnerships, are governed by Sectoral Determination No 5: Learnerships in terms of Section 55(1) of the Basic Conditions of Employment Act, No 75 of 1997, read together with Section 18(4) of the Skills Development Act, No 97 of 1998.

Contractors enrolled on structured learning programmes may be contracted on negotiated contracts as part of their practical or workplace experience.

3.7 The Construction Industry Development Board (CIDB) Act (Act No. 38 of 2000)

The CIDB was established as a Schedule 3A public entity *"to provide strategic leadership to construction industry stakeholders to stimulate sustainable growth, reform and improvement of the construction sector"*. Its focus is on:

- Sustainable growth, capability and empowerment.
- Improved industry performance and best practice.
- A transformed delivery environment underpinned by consistent and ethical procurement practice.
- Enhanced value to clients and society.

The CIDB, among others, handles the grading and registration of contractors, keeps a register of projects and regulates the Standard for Uniformity in Construction Procurement Documentation.

a) The Register of Contractors

Chapter three (3) of the CIDB Act stipulates that the CIDB is mandated to *"... establish a national register of contractors, which categorises contractors in a manner that facilitates public sector procurement and promotes contractor development"*. The Register of Contractors must categorize contractors in a manner that (16(1)):

- Facilitates public sector procurement.
- Promotes contractor development.

A contractor may not undertake, carry out, or complete any construction works or portion thereof for public sector contracts, awarded in terms of competitive tender or quotation, unless he or she is registered with the Board and holds a valid registration certificate issued by the Board (18(1)). The Register of Contractors stores and provides data on the size and distribution of contractors operating within the industry and the volume, nature, performance and development of contractors and target groups; and registration with the CIDB will be an entry requirement for all contractors who wish to register on the Department's database for the contractor development programme.

b) The Register of Projects

Chapter Four (4) of the Act stipulates that the CIDB must establish a national register of projects to "... gather information on the nature, value and distribution of projects and provide the basis for the best practice project assessment scheme". The implication is that all the construction and engineering projects with a value of R200 000 and above are to be registered with the CIDB's Register of Projects.

c) The Standard for Uniformity in Construction Procurement Documentation

Aligned with government's supply chain management policy, the CIDB has published the Standard for Uniformity in Construction Procurement, creating synergy and consistency across the procurement continuum. The Standard is supported by the CIDB Library of Construction Procurement Best Practice.

3.8 The National Procurement Task Team

On a national level, a Procurement Task Team consisting of inter alia, officials of the departments of Public Works and National Treasury was established to investigate ways and means to address constraints in the State's procurement conditions and procedures and to make it easier for small, medium and micro enterprises (SMME's) to participate in the procurement process. A National Task team developed the Ten Point Plan, which was approved by National Cabinet on the 14th of February 1996, providing the following outlines:

- Preparation and distribution of tender information:

Government should assist with the preparation and distribution of information on tenders in a simple format to interested organisations and enterprises.

- **Tender Advice Centres:**
Government should establish tender advice centres to assist enterprises with the preparation of tenders.
- **Database of suppliers:**
Government should revise its existing database of suppliers with a view to accommodating small, medium and micro enterprises.
- **Guarantees / Securities:**
The requirement of security for all contractors bidding for contracts with a value of R100 000 or less should be withdrawn to assist small entrepreneurs in the construction industry.
- **Unbundling of large projects:**
Acquiring of services and goods must be broken up in the smallest possible units, without having to impact on quality, time and cost.
- **Payment of suppliers:**
Payment of suppliers must be within 30 days.
- **Procurement preferences:**
Preferences must focus on persons in the small, medium and micro sectors that were disadvantaged through unreasonable discrimination.
- **Simplified tender documents:**
Tender application forms will be simplified to make it easier for small businesses to deal with the paper work involved in tendering.
- **Procurement Ombudsman:**
An ombudsperson will be appointed to investigate fast and effective responses to complaints by private enterprises.
- **Creation of an enabling environment:**
Steps must be taken to assist with the establishment, regulation and promotion of an environment that will meaningfully and effectively favour SMME's.

3.9 The Reconstruction and Development Programme (RDP) – A Policy Framework of 1994

The ANC's publication *"The Reconstruction and Development Programme – A Policy Framework of 1994"* also sets out an integrated, coherent socio-economic policy framework to mobilise all our

people and resources towards the eradication of past policies. These principles are to be applied in the Northern Cape Provincial Government's infrastructure and services provision, as well as its maintenance and refurbishment programmes. These principles are:

- An integrated and sustainable long-term programme.
- Democratising and accountable processes.
- Developing human resources at all levels.
- Building and stimulating the local economy.

3.10 The Expanded Public Works Programme (EPWP)

The implementation of a Contractor Development Strategy is also in line with Government's EPWP. A key to the success of the EPWP is that all role players are fully conversant with labour intensive construction methods and practices. Contractors, in planning and execution of projects, play a prominent and indispensable role in ensuring that EPWP principles are embedded in projects to enable the Provincial Government to meet and/or exceed its EPWP targets.

4. TARGETED PROCUREMENT STRATEGY

4.1 Objectives

The primary objective of this policy is to support the PGDS's objective on infrastructure development which strives to *"creatively explore ways to increase the public investment expenditure, and use of infrastructure expenditure to more effectively address the interrelated objectives of poverty eradication, employment creation and economic growth. This will include the development and use of labour intensive and community based construction measures and affirmative procurement to direct infrastructure to SMME's."*

This policy will therefore enable the Department to achieve its infrastructure development strategic objectives by significantly improving the:

- Availability of technical skills for infrastructure projects within the Province.
- Contractor capacity to undertake infrastructure development demands associated with expected growth in infrastructure budgets.
- Competitiveness and transformation of the construction sector.
- Delivery processes for the EPWP.

Through this policy the Contractor Development Strategy needs to address the objectives of the AsgiSA, Jipsa, as well as the MDG's, especially the halving of unemployment by 2014.

The implementation of this policy and the corresponding strategy must also ensure that the top of the list of projects to be reserved, provides for a balanced input between plant and labour intensive and labour based projects. This will ensure that contractor and skills capacity is developed for both conventional and EPWP methods.

The two main objectives to be achieved in terms of this policy and corresponding Contractor Development Strategy are strategic and contractor based.

In order to achieve the above-stated objectives, the Department will/may consider incorporating as part of its contractual strategy, contractual obligations to serve as a lever to fast-track social and economic development.

4.2 Strategic Objectives

The strategic objectives are:

- a) To provide the Provincial Government with a pool of contractors over the range of CIDB gradings able to undertake and deliver construction, maintenance and refurbishment works on time and to specification.
- b) To accelerate higher and shared economic growth and development of SMME's that will be able to participate in the main stream of the economy with enhancement of economic growth.
- c) To fight poverty and to build clean, healthy, safe and sustainable communities. Local labour will be employed by SMME contractors that will create job opportunities and alleviate poverty.

4.3 Contractor Development Objectives

The contractor development objectives are to:

- a) Grow South Africa's contracting capacity, moving smaller contractors into mainstream construction and to higher CIDB levels.
- b) Target empowerment gaps revealed by the CIDB contractor register.
- c) Promote enterprise sustainability and consolidation, creating sustained employment and skills development, through mentoring and embryonic partnerships, so that contractors in time improve their CIDB contractor grading designations.
- d) Raise the performance and quality of contractors, delivering quality goods.
- e) Target interventions based on the Register of Contractors, which categorizes contractors



according to capability.

- f) Create an enabling contracting environment that will allow access to financial support, information, knowledge systems, training and mentorship.
- g) Monitor growth of contractors.
- h) Create a pool of capable contractors that will be able to compete in the open market.

5. PRINCIPLES, VALUES AND PHILOSOPHY

The Department supports the RDP principles and Government's mandate for developing SMME's in the engineering and building industry. The Northern Cape Provincial Government also acknowledges that there are many local resources available within the Province, inclusive of a large number of skilled and unskilled persons, contractors with various gradings, construction equipment, locally manufactured construction materials etc. Consequently, the Department supports the principle that local resources must be utilised optimally in the execution of projects and through contractor development initiatives to stimulate community development at large. Although the Department acknowledges the role that established contractors play, it encourages changes in the contractual environment to ensure the proper spreading of work opportunities, and an increase in the creation of job opportunities through labour-based methods as far as it is practically and economically feasible.

Consequently, any Contractor Development Strategy to be implemented in terms of this policy must be in line with these priorities, as well as any other national initiatives for contractor development.

The corresponding Contractor Development Strategy should also be based on the following principles:

- The selection of contractors to participate in the programme must be open and transparent.
- The development of existing entrepreneurs must be enhanced.
- The provision of managerial training interventions to support the career pathing of contractors.
- The provision of practical/technical on- the- job-training of contractors and their workers to enable contractors to establish a competent workforce.
- The monitoring of contractor development, assessment and training.
- The provision of mentorship on construction sites.
- Regular auditing, monitoring and reporting to ensure good governance.
- The identification of suitable projects for contractors in the various gradings.

81

5.1 Strategic Alignment

The strategic plan of the Department has also identified the following areas of performance as key to the sustainable development of contractors:

- Job creation and labour intensive programmes: It is expected that the Department will align and comply with the Construction Industry's BEE Charter and EPWP guidelines.
- BEE and local resources: The Department is proposing to use current actual procurement expenditure from the SCM unit to determine the achievable targets on an annual basis.
- The EPWP: The Department wants to expand the EPWP guidelines to all of its projects in construction and maintenance.
- Training Programmes: The Department is considering the development of the Community Training Strategy which will facilitate the development of appropriate skills within the community.

The departmental APP, the OP's and the IP are all vehicles for the success of the above KPA's. Appropriate budgets need to be made available in support of various targets set within the implementation plans.

The Contractor Development Strategy will also need to be aligned to the infrastructure budget priorities of the APP (i.e. type and value of current and capital works). The strategy should therefore respond to:

- The type of work to be performed by the Department within various Local and District Municipalities.
- Operational skills required to be developed over the short and medium term.
- The number of contractors to be developed per CIDB grading level per Local / District municipal area;
- The B-BBEE targeting strategy (B-BBEE Codes Scorecard and operational strategy for the development of contractors).
- Financing requirements for the programme beneficiaries (this requires facilitation by the Department with various financiers or use financiers who have entered into a memorandum of agreement with the CIDB).

NOTE: All projects will be developed and managed in terms of normal project management principles. The above strategy should not only rely on the Department's infrastructure budget, but consideration should also be given to the work opportunities available from other client bodies. The co-ordination of efforts will be a crucial factor in achieving the effective targeted strategy for empowerment in general.

6. SCOPE OF APPLICABILITY

The primary beneficiaries of this Contractor Development policy and corresponding Strategy will be:

- **Local contractors and supplier companies owned by previously disadvantaged individuals**
They will be assisted with capacity building programmes, which will facilitate their full participation in the construction industry. They will also be provided with targeted contract opportunities and, as far as possible, women, youth, people living with disabilities and rural people will be targeted.
- **The Department and other client bodies for whom the Department is the implementing agent**
The commitment and participation of the Department and all client departments for whom the DRPW is the implementing agent is essential for contractor development to succeed. Successful implementation of this policy and corresponding strategy will also ensure that there is increased capacity within the Province to tackle the demands associated with the growing budgets of the infrastructure sector, and will also promote a healthy competitive environment for infrastructure projects.
- **The construction sector**
The implementation of this policy and corresponding strategy will assist the construction sector in achieving the targets of its B-BBEE Scorecard as published through the DTI. It is imperative that the Department integrates its efforts with other industry initiatives.

7. PROCEDURES

A clear distinction must be made between open-market, competitive tenders (procurement) and construction contracts allocated (awarded) to contractors in a structured contractor development programme intended for development and training. The two distinctly different environments are briefly discussed hereunder:

7.1 Procurement Environment

The procurement of services to construct infrastructure projects must, in terms of Section 217 of the Constitution, be based on a *"system which is fair, equitable, transparent, competitive and cost-effective"*. Similar requirements are laid down in the Rationalisation of Local Government Affairs Act (Act No. 10 of 1998); as well as the PPPFA and the PFMA.

This environment, i.e. the normal, conventional tendering/procurement environment, holds risks for both the client department and contractor. The contractor manages his/her risks by identifying and pricing them, for e.g. insuring his/her construction plant and equipment. The client, on the other hand, manages risks associated with poor performance and resultant damages by requiring contractors to provide sureties up-front, withholding a percentage of payments to a contractor for specified periods, paying the contractor in monthly cycles, and applying penalties for late completion of contracts.

The conventional high-risk, competitive environment is therefore intended to obtain competitive tenders from contractors whose goal is to execute a contract within time, to specification and within an expenditure target to carry his/her risks and provide for a profit margin. In contradiction, a training and development programme with human resource development as goal, is difficult to accommodate or incorporate in an environment where conflicting goals prevail.

7.2 Training and Developmental Environment

Human resource development is governed by the SAQA Act (Act No. 58 of 1995), the Skills Development Levies Act (Act No. 9 of 1999) and the SETAs established in terms of this Levies Act.

All of the aforementioned legislation promotes training and development that may, among others, lead to the achievement of a qualification within the NQF, in a step-by-step manner. Because a structured learning and development environment relates to an occupation, it should include both structured work experience (i.e. a practical component) and instructional learning (i.e. a theory learning component) by accredited Training Providers and Construction Mentors. Instructional learning and structured work experience can only be gained effectively in an enabling environment, and not in the normal competitive, high risk, procurement and contractual environment.

In summary, the environments of training and development on the one side and open-market, competitive, high-risk procurement based contracts on the other side, provide for different needs and objectives. The Contractor Development Strategy should therefore provide a clear guideline and procedures on how to manage these environments in an integrated process and in an accountable and transparent manner, in line with the letter by National Treasury to the Department of Public Works regarding tenders for contractors under the Vuk'uphile Contractor Development Programme.

7.3 Approaches to Procurement and Delivery

The procurement strategy arrived at by the Department will be documented in such a manner that the logic behind the following implementation strategies are listed. The choices that are made at each

step can be communicated and reviewed if needs be, in line with the Preferential Procurement Policy Framework Act and any other relevant Act.

7.3.1 Supply Chain Management (SCM)

Supply Chain Management should not be about advertising tenders at various CIDB grading designations only in the hope that there would be a pool of competitive bidders in the market ready to respond to the advert. It should be about matching opportunities with the available capacity within the industry. Where there is inadequate capacity to deliver, this window of opportunity should be used to introduce entrants in the market. It is therefore proposed that the Department consider the following procurement strategies in support of this policy.

7.3.2 Unbundling of Contracts where Feasible

This is easily achievable on multi-year projects where more contractors are accommodated within one project without incurring huge additional costs in contract supervision. Where contracts have been unbundled, it is ideal to have contractors of various levels of capability working alongside each other because the less experienced contractors have an opportunity to share best practices with those that are experienced.

The advantages of the unbundling of contracts is that it offers more opportunities to smaller contractors; does not require huge start-up capital and bridging finance; protects the smaller contractors because big contractors would not normally tender for small-size tenders; provides a good training ground as work of similar nature and size provides confidence for performance; there is less risk of works being uncompleted; and the implementation of a fire-fighting strategy is feasible.

The disadvantages include increased tender and contract administration costs; sometimes a culture of dependency on one client body is created; increased mentorship costs; and it requires an effective risk management system for the successful completion of contracts and to curb corrupt activities.

7.3.3 Multi-year (Annual) Contracts

There will be more opportunities for a sustainable environment for contractors through adherence to the NIMS and the GIAMA. When the Department is developing its Immovable Assets Maintenance Plan it would be necessary that empowerment becomes central to the plan as multi-year maintenance projects are the most sustainable source of continuous, repetitive work opportunities. These projects promote the long term financing of equipment and plant, as well as the development and retaining of skills.

The advantages of reserving multi-year contracts for contractor development are that it creates an enabling environment for skills development programmes such as learnerships; skills retention is possible; it allows for the purchasing of plant and equipment by contractors; and repetitive work gives confidence to a contractor and her/his staff. The project can also be completed as far as is reasonably possible within the budget that was agreed to. Projects of this nature will also promote work force skills development, sustainable jobs and sustainable empowerment.

The disadvantages is that there is no guarantee that contractors would win contracts unless the client facilitates such an environment.

7.3.4 Joint Ventures (JV's)

The SOW is used to identify the appropriate opportunities for contractors. It is very important that the selection of activities is done in a way that would enable contractors to develop both their financial and technical capabilities. The monitoring of the performance of a JV in respect to skills transfer cannot be delegated to the prime contractor or the engineer. While the prime contractor, external mentor or the engineer are role-players towards the empowerment of the contractor, an independent assessment of the empowerment impact is still necessary. The Department will need to guard against allowing contractors to become passive participants in a JV, thereby undermining the purpose of the empowerment strategy. The objective is to couple action with active learning and infrastructure delivery. Long term strategic partnerships can be formed which can maximise efficiency.

The advantages of a JV are that industry experiences are shared between established and emerging firms; troubleshooting mechanisms are readily available on site, such as personnel, plant, credit facilities etc.; and integration and long-term relationships are possible.

The disadvantages are that some emerging contractors enjoy passive participation; some established contractors promote passive participation; financial capacity and credit worthiness are not built within the junior partner because the established firm will tend to take care of all financial challenges; the take-over attitude applies where challenges for performance occur; and forced marriages may create tension rather than good work environments.

7.3.5 Nominated Subcontractors

This is a perfect tool for targeted development. The nomination of contractors may be conducted in a manner that targets the empowerment of women, youth, people with disabilities and local contractors and suppliers, as well as taking advantage of capacity requirements within specific CIDB grading designations, etc. This strategy will require that the Department creates an auditable database of

contractors which could be used for this purpose. Responsibilities of the contractors will be accurately stated.

The advantage of using nominated subcontractors is that it allows for the targeting of specific outputs, mainly on big projects, such as the participation of women and the youth. However, it also serves as an anti-fronting tool, and clients can allocate specific work to be performed by sub-contractors upfront.

The disadvantages are similar to those of JV's.

7.3.6 Allocation of construction works contracts

Allocation of construction works contracts for developmental objectives, is provided for within the South African legislative framework, provided that sustainable, fair, equitable practices as depicted within the National Contractor Development Programme Framework are implemented.

The key principles for establishing and operating the Contractor Development Programme (CDP):

- to provide direct contracts to developing contractors within the CDP's, based on the developmental objectives approach;
- also to allow contractors to enter the programme based on predefined criteria; and
- to support contractors to enable them to exit the programme on the basis of achieving predefined criteria.

(1) CIDB – Practice Note – 29 July 2012

Relating to skills, qualifications, certification, sustainability, quality, etc.

Implementation:

Allocation of such projects for developmental purposes should have:

- clearly defined developmental criteria and objectives as depicted in the National Contractor Development Programme.
- contractors identified for entry into the programme, to be subjected to a developmental programme which must be attained within a prescribed period (e.g. 3 years); and
- all contractors should exit within the prescribed period – graduation criteria will apply to those that have attained the necessary qualification within the prescribed period.

(2) CIDB – Practice Note – 29 July 2012

The process will allow the Department in terms of the existing legislative framework, to select and allocate projects to individual contractors, provided that a competitive tendering process takes place amongst the contractors enrolled in the Contractor Development Programme.

The Department will:

- identify projects which by their nature have the ability to assist in the development of a contractor;
- allocate a portion of its budget for these developmental projects for the exclusive expenditure only to contractors within the Department's predetermined development programme;
- award individual projects to contractors enrolled in the Contractor Development Programme through a competitive tendering process.

The advantages of the allocation of construction works contracts are that it allows for dedicated ; funding and projects for contractors:

- there is an almost guaranteed attainment of set B-BBEE annual targets;
- it provides for a progression strategy that is easy to develop and monitor;
- it provides an enabling environment for skills development; and
- linkages with financial institutions become more possible.

7.4 Capacity Building

In order to ensure the success of the programme, various targeted capacity building initiatives will also need to be developed. These should be aimed at contractors as well as departmental staff responsible for strategy, implementation and monitoring of programme achievements. The main areas of focus should be:

- Technical skills.
- Soft skills.
- Mentorship / Contract Management support.
- Financial and business training and support.
- Organisational Development.

7.4.1 Technical skills

Special attention is required in the development of technical skills. The country has started to import various priority skills, from professionals to artisans, due to the increased budgets for infrastructure as a result of the 2010 Soccer World Cup and private sector investments, as well as the public sector infrastructure budgets aiming at social justice for all.

This skills development initiative must be designed to support the AsgiSA and the Jipsa by ensuring that within our communities we are able to integrate our efforts with organisations such as the CETA and the FET's, as well as supporting the in-service training for technicians and engineers.

This integrated approach will ensure that the Department is able to create technical capacity from a management to a labourer level. The Department will also need to annually prioritise its inputs into this initiative, based on the skills audit within the Province.

The contractors should be encouraged to ensure continuous development and retention of own production personnel.

7.4.2 Soft Skills

There is a great need for attention to be given to soft skills development, as amplified in the EPWP guidelines. These skills range from HIV/Aids awareness to safety aspects etc., and are very useful in the well being of society, especially in the rural areas. Skills programmes need to be geared towards local labour and mainly as part of EPWP compliance.

7.4.3 Mentorship / Contract Management Support

Mentorship should be provided to contractors in order to curb contract non-performance. Mentorship can be provided by prime contractors or independent mentors. It is common practice that when a mentor is provided within a contract and there is non-performance by the contractor, the obligations of the contractor to perform are taken over by the mentor in order for the work to be completed. It is therefore imperative that the duties of a mentor are clearly defined and the monitoring mechanisms are put in place to ensure that each party adheres to her/his obligations.

In each contract, there needs to be clearly defined contract management interventions that have to be put in place in order for the works to be successfully completed. Some of the failures within a particular contract might be attributable to activities outside the contract that was currently being performed. It is therefore important for the Department to enter into a mentorship agreement with the contractor, whereby the contractor agrees to inform the employer or her/his representative of:

- Other projects that the contractor may be performing during the current contract period.
- Outstanding creditors - this may assist the employer to conduct an age analysis on all outstanding monies.
- The credit facilities available, including bank overdraft facilities, which would be used in the performance of the contract.



- The monies taken out of the contract, other than salaries, which may be used to fund other interests.
- The contractor's technical capacity to perform the contract which must include a staff organogram and audit of competency, contract management systems and the sourcing of plant requirements.
- Compliance with statutory requirements such as VAT, UIF, etc; and
- Any other information that would assist the Department to manage risks associated with the contractor environment.

7.4.4 Financial and Business Training and Support

Financial and business training is crucial for the sustainability of any business. If contractors have to survive beyond five (5) years of their trading, each contractor within the development programme would need to undergo various awareness training programmes about the importance of good financial management.

The contractors would need to be aware of the capabilities required to manage a business within a construction sector in respect of various CIDB gradings. This would assist contractors to make the right choices in terms of their levels of comfort in relation to work types and value.

Besides the training programmes, the Department would also need to facilitate financial and business support services through linkages with other stakeholders, such as the SEDA, financiers, suppliers, etc.

7.4.5 Organisational Development

The Department will not conduct its business on a contractor by contractor basis. In order to optimise its capacity building efforts, including information sharing, the Department will formalise its relationship with contractors through their associations, such as the CIDB.

The formation or formalisation of the associations which would represent contractors will be finalised with the contractors across the Province and an MOU will be entered into between the Department and the Associations. The primary benefit of the MOU is that the contractors will be afforded an opportunity to know about the challenges associated with the planning and implementation of infrastructure projects. This will assist them in understanding some of the unfavourable conditions they may encounter in the industry in general.

The Department will also need to provide appropriate organisational support at a strategic level in order to ensure that the programme gets the attention it deserves. The implementing units should therefore ensure that technical personnel dealing with tenders and the contracting administration are

capacitated to understand the various forms of empowering contractors, from compilation of tender documentation to the project close-out stage.

7.4.6 Payment Procedures

It is also imperative that the Department creates capacity for the timely processing of the contractors' payment certificates, or other suitable arrangements that will provide contractors with the needed cash flow to perform work uninterrupted. An efficient payment system will assist in providing the contractors with an improved cash flow. An efficient payment system will also result in fewer challenges associated with bridging finance (with the exception of expensive materials and plant hire where no credit facilities are available).

8. ROLES AND RESPONSIBILITIES

8.1 The Directorate Public Works and Expanded Public Works

This policy will be binding on all directorates involved with the implementation of contractor development, however, the Chief Directorate Public Works and Expanded Public Works will be mainly responsible for drafting and regularly updating the Contractor Development Strategy. The Directorate will also be supported by their Contractor Development Unit and all District Offices.

The Directorate Public Works and Expanded Public Works **should** also be tasked with the responsibility for communicating the policy and corresponding strategy, and for assuming accountability for the proper implementation and management thereof.

8.2 Project Steering Committee

In order to ensure an integrated structured approach in conformance with the policy, the Contractor Development Strategy should also be directed at a corporate level **by** a PSC, consisting of officials from various Directorates, participating client departments and programme managers. Potential members of the PSC can be drawn from:

- the Chief Directorate Public Works and Expanded Public Works;
- the Contractor Development Unit;
- other client departments – possibly on a revolving basis – and especially when a client's project has been reserved for contractor development;
- the CIDB;
- the CETA.

Other stakeholders from the private sector, financial institutions, parastatals, the built environment associations, and consultants will be called upon on an *"as and when required basis"* to ensure transparency and stakeholder involvement throughout the programme.

The basic functions of the Project Steering Committee will be to:

- Facilitate the involvement of other departments.
- Oversee the contractor development programme based on the policy.
- Identify and advise departments on the number and size of projects required for the programme.
- Establish and maintain a database of contractors participating in the development programme.
- Assign or recommend for appointment, as and when the need may arise, the following positions:
 - Unit Manager,
 - Programme Manager,
 - Training Providers,
 - Mentors to contractors.
- Receive and evaluate adjudication reports on Contractor Development Programmes and training contracts, and submit recommendations to the HOD for the concluding of any contract.
- Propose revisions to the programme in order to obtain and heighten objectives.
- Monitor the sharing of skills and expertise to provide greater predictability.
- Monitor and evaluate progress.
- Report on progress to the HOD and the Premier on a regular basis.

8.3 Promotion and Communication

The Department's Contractor Development Programme should be communicated to local authorities, communities and the construction industry at large. The construction industry will only participate if a sense of partnership is fostered.

It should further be communicated widely in order that equal opportunities be afforded to everyone who wishes to participate in the programme.

The objectives of the promotion and communication strategy should be to:

- Increase association of the Department and its involvement in delivering infrastructure to the wider community and client departments.
- Enhance the image of the Department within and outside the sector.
- Create awareness of the Department's project functions and deliverables.
- Promote the Department's values and credibility in the sector.
- Establish continuing communication channels with all stakeholders and participants to ensure a



mutual loyalty and transparency.

9. RESOURCE IMPLICATIONS

The following are a list of resources required for implementation.

9.1 Provision of Technical Management Support Services (Mentorship)

Throughout the construction of training or incubated contracts mentors will be provided as a support mechanism to direct contractors in respect of the full construction cycle and also to protect the Department's interests and reduce some of the risks associated with the lack of experience of contractors. The mentorship programme will allow contractors to draw upon the strengths and expertise of the mentor.

The support needs of contractors will vary and may be limited in cases of contractors with higher CIDB gradings. The support needs of a contractor(s) must be evaluated and confirmed at the project inception stage. Mentors therefore need to:

- Have general construction experience.
- Have experience or exposure to the development of SMME enterprises.
- Be qualified as a Built Environment Professional.
- Sign and declare adherence to the SACPCMP Code of Ethics for Mentors.

Mentors will, inter alia:

- Monitor training needs with regard to learnerships and/or skills development programmes.
- Monitor and evaluate contractors, learnerships and skills programmes, assessments and registration.
- Ensure that acceptable training standards are maintained.
- Conduct site management.
- Provide guidance to expedite work progress.
- Assist with the interpretation of drawings, specifications and related contractual matters.
- Ensure safety measures.
- Monitor materials handling.
- Oversee quality control.

The aim of providing technical support to contractors is to enable them to execute projects successfully, as well as to develop in the process.

9.2 Provision of Training Services

Critical to the development of contractors and enhancing the capacity of departmental staff is the provision of skills training.

Training Providers have to be SETA/CETA accredited and should be carefully selected in order to ensure that they can provide the required training and work within a structured managed programme, contrary to the normal practice where training providers are only performing training and report to SETA/CETA.

9.3 Simplification of Tender Documents and Conditions

The sustainability of a contractor development programme and the successful implementation of this policy are dependent on the creation of an enabling environment in which contractors are provided with the opportunity to participate and develop. The simplification of Tender Documents and Conditions are intended to make the contractual environment user-friendly to contractors participating in the building and engineering construction environments, without unduly increasing risks to the Department. In short, the entire process should be structured to provide opportunities through the simplification of relevant procedures, processes and documentation.

Tender documents should be prepared by or on behalf of the department responsible for the delivery of the project; where after tenders for the construction of the works will be invited through a selective process.

Submissions should be prepared and submitted to the relevant Departments, the Project Steering Committee and the Bid Evaluation and Bid Adjudication Committees for approval. Submissions should, inter alia, include:

- Simplification of tender documents.
- Setting of affordable sureties.
- User-friendly procurement procedures.
- Appropriate quick payment procedures.
- Appropriate permissions and delegations.
- Appropriate contractor's All Risk Insurance.

9.4 Steady Access to Work Opportunities

Critical to the rolling out of any contractor development programme is the availability of projects, which can be earmarked, at budget approval stage. Annually, the Chief Directorate Public Works and Expanded Public Works, together with the Contractor Development Unit and client departments for whom the Department is the implementing agent, must agree on the number and value of projects to be linked to the Contractor Development Programme. Without a sufficient number of projects the Contractor Development Programme cannot be rolled out. Projects to be identified can focus on:

- Single storey building construction, upgrading and restoration works.
- Water supply, sewerage, fencing and site works.
- Construction of storm water drainage systems, roads and parking.
- Electrical work.
- Painting, plumbing and technical trades.

Each Directorate within the Department or client departments may also submit projects to the Chief Directorate Public Works and Expanded Public Works for implementation under the contractor development programme, subject to approval by the Project Steering Committee.

9.5 Funding

No additional funding will be allocated to the Department to implement the contractor development programme. The annual budget allocations for departments must be used to implement the programme. Projects must also, as far as possible, be classified under the EPWP to maximise wage incentive grants that are recoverable from Treasury.

CETA, as the statutory body providing funding for skills development, can be involved to provide the following:

- Financing of accredited training in a structured learning programme.
- Quality assurance of accredited CETA training and the awarding of qualifications.

The Department shall aim to allocate 2% of a project budget (2% of the 10% allowed for contingencies on a project) to a special vote to provide funds for training and management of the Contractor Development Programme. CETA and other training grants received by the Department can then be paid into this vote to supplement the budget. This will ensure that funds become available for training and that training is not impeded by outside funding. The Chief Directorate Public Works and Expanded Public Works should also prepare a detailed budget for expenditure under this vote for approval by SMS and the Department's SCM unit, and also report monthly on the expenditure

thereof.

9.6 Contractor Development Database

Critical to the administration of any contractor development programme is the development of a contractor database, which will be used to track the progress of participating contractors and provide the Department and client department's with a pool of contractors.

Contractors will be invited to register on the Department's database through open and transparent processes, for e.g.:

- Advertisements placed in local newspapers inviting contractors to register on the database.
- Personal invitations to contractors registered on the CIDB database to attend road shows where the aims of the Department's Contractor Development Programme will be explained to them and contractors given the opportunity to complete registration forms.
- Open invitation to contractors on the CIDB database to complete registration forms to register.

Criteria for contractors to register on the database should include:

- Registration on the CIDB's Registrar of Contractors.
- Valid Tax Clearance Certificate.
- Registration on the Department's vendor list (when training or incubating contracts are awarded).
- Contractors must be residents of the Northern Cape.
- Contractors shall be operating mainly in the Northern Cape.
- Contractors must be available for capacity building programmes arranged by the Department.
- Contracting entities with shareholders who are employed in the public service must declare such information prior to their admission into the database.

The Department may limit the number of contracts that may be awarded to a contracting entity at any one time. This will be based on the following:

- The contractor's previous record as well as technical and financial capacity to perform additional work.

The Contractor Development Unit will be responsible for managing and maintaining the database, inclusive of the:

- Recording of admitted contractors.
- Recording of blacklisted and exited contractors.

- Aggregation of women, youth, and people living with disabilities.
- Tracking the growth of contractors.
- Tracking of capacity building interventions available to contractors.
- Recording of misconduct such as judgements against contractors.
- Plant owned by contractors.
- Tracking of improvement/decline of the financial capacity of contractors.
- Tracking of improvement/decline of technical the capacity of contractors.

10. MONITORING & EVALUATION

Primarily the monitoring and evaluation for the effective implementation of this policy will be carried out by the Chief Directorate Public Works and Expanded Public Works, and the Contractor Development Unit, as well as the Directorate Policy and Planning, on an ongoing basis. As this is one of the priority areas for service delivery, there needs to be an independent evaluation of the programme through the Internal Audit Unit of the Department at least every two years.

Monitoring and evaluation processes will have to ensure that the focus is not only concentrated on project delivery. For a programme of this nature to succeed, it must be ensured that there is adequate and effective planning towards the strategy of opportunities and support requirements for the target beneficiaries.

11. POLICY REVIEW

The first review of this policy shall be after the gazetting of the amendments to the PPPFA, roll out of the CIDB Best Practice Model for Emerging Contractor Development Programme or any other legislation that may impact on the provisions of this policy. Unless stated within the CIDB Best Practice Model, the policy shall be reviewed every two years from its effective date.

12. APPROVALS AND RECOMMENDATIONS

This policy is ~~not~~ approved / ~~not~~ approved

Comments:

.....
.....
.....
.....


ACCOUNTING OFFICER

01-03-2013
DATE

This policy is approved / ~~not~~ approved

Comments:

.....
.....
.....
.....


MEMBER OF THE EXECUTIVE COUNCIL

18.04.2013
DATE