

**UNIVERSITY OF KWAZULU-NATAL**

**BLACK ECONOMIC EMPOWERMENT AND ITS IMPACT ON TENDERING  
PROCEDURES AND PROCESSES WITHIN THE MINISTRY OF PUBLIC  
WORKS –KZN**

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# DECLARATION

I Nozipho Fortunate Mkhize declare that:

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## **ABSTRACT**

The goal of this study was to determine the impact of Black Economic Empowerment (BEE) on the tendering procedures and processes in the Ministry of Public Works, KwaZulu-Natal (KZN).

The study identified the problems with regard to the implementation of BEE within the Ministry and insight was gained into how BEE policies are structured and the particular goals set by the Ministry in that regard. This was undertaken with a view to determining the effect that BEE has on public administration practice, with particular emphasis on the tendering processes of the Ministry.

Based on insight gained through this research, the study concludes with a set of recommendations which, hopefully, will improve BEE practices in tendering policies and procedures in the Ministry.

This was a qualitative study, which collected data using structured questionnaires and one-on-one interviews with selected senior officials sampled from the population group within the Ministry. In addition, the study utilised secondary information through a thorough literature review of the subject matter as well as relevant reports, policies and legislation.

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# **CHAPTER 1: INTRODUCTION TO THE STUDY**

## **1.1 INTRODUCTION**

According to Woolley (2005:21), empowerment has been a recurring theme in the policy of the African National Congress (ANC) since the formulation of the Freedom Charter. It, therefore, came as no surprise that among the new democracy's first projects was an empowerment-related initiative known as the Reconstruction and Development Programme (RDP). The main objective of this policy was "the creation of jobs, human resources development, provision of infrastructure, changes in ownership and the reduction of inequality in society" (Reconstruction and Development Programme, 1994).

Government policies emerge from the demands emanating from concerned citizens, interest groups and public officials of the government of the day. Each policy is intended to accomplish specific goals and produce certain results. It is, therefore, important for government officials to commit themselves to proper implementation of policies, following which a structured evaluation process should be undertaken to track compliance and ascertain the degree to which public policy fulfils its intended purpose.

Black Economic Empowerment (BEE) in South Africa is not simply a moral initiative to redress the wrongs of the past. BEE is also a pragmatic growth strategy that aims to realise the country's full economic potential (Alexandra 2000:1).

Empowerment of the previously disadvantaged is also a constitutional obligation. Section 217 of the Constitution of the Republic of South Africa (Act 108/96) provides that:

- (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 or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.
- (2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection 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 subsection (2) may be implemented” Constitution (Act 108/96).

The BEE provisions are favourable to small businesses, although there are still some implementation problems. There is a need to create an environment in which small businesses can flourish. While access to contract opportunities has been widely promoted by most public sector agencies, including the Ministry of Public Works, the sustainability of small contractors is jeopardised by a number of issues, including lack of skills and exposure and the high levels of corruption in the public sector.

Many of these challenges stem from the fact that the government’s small business promotion policy has also not been without problems. For example, tender advice offices have focused on micro and survivalist businesses and have not provided appropriate services to small and medium enterprises (Alexandra 2000:2). Effective small business development requires government to create an environment that encourages investment in the small, medium and micro enterprises (SMME) sector. These are some of the factors that prompted this study.

## **1.2 BACKGROUND**

In the decades before South Africa achieved democracy in 1994, the apartheid government systematically excluded African, Indian and Coloured people, collectively known as "Black people" from meaningful participation in the country's economy. This led to much poverty and suffering - and a profoundly racially skewed economy.

Alexandra (2000:3) notes that the distortions in the economy eventually led to a crisis, starting during the 1970s, when gross domestic product (GDP) growth fell to zero, and then hovered at about 3.4% through the 1980s. The author adds that at a time when other developing economies with similar resources were growing, South Africa was stagnating. She quotes an excerpt from the BEE strategy document prepared by the Department of Trade and Industry (DTI): "Our country requires an economy that can meet the needs of all our economic citizens - our people and their enterprises - in a sustainable manner."

BEE is firmly rooted in the struggle against apartheid and is an integral part of the ANC's national democratic revolution (NDR). According to the FW de Klerk Foundation's 2005 report, *Black Economic Empowerment in South Africa*, the political and constitutional transformation of South Africa in April 1994 represented only one part of the overall goal of NDR (FW de Klerk Foundation report, 2005).

The NDR also requires the social and economic transformation of the country. According to the FW de Klerk Foundation's 2005 report, *Black Economic Empowerment in South Africa*, the ANC's 1969 Strategy and Tactics document emphasised that:

"In our country - more than any other part of the oppressed world - it is inconceivable for liberation to have meaning without a return of wealth and land to the people as a whole. It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy. To allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not represent even a shadow of liberation."

According to the ANC's 1992 Policy Guidelines, quoted in the FW De Klerk Foundation Report (2005), "...management of both the public and private sectors will have to be deracialised so that they rapidly and progressively come to reflect the skills of the entire population. Equity ownership will have to be extended so that people from all sectors of the population have a stake in the economy and power to influence economic decisions" (FW de Klerk Foundation report, 2005).

The new ANC Government insisted that a central objective of the RDP would be "to deracialise business ownership and control completely through focused policies of Black Economic Empowerment" (FW de Klerk Foundation report, 2005). The *Report* emphasises that the ANC also viewed BEE as a central requirement for sustained economic growth, arguing that the economy would never achieve its full potential if the majority of the population remained effectively excluded from ownership and full participation. In July 2000, the ANC identified the need for targeted strategies in areas such as the control/ownership of productive property by Black people and women, including land, the reduction of racial and gender disparities in income and wealth; and the building of a more

egalitarian society (The FW de Klerk Foundation: *Business Report on Black Economic Empowerment in South Africa*, 2005:2).

Writing in the *Business Report* newspaper (9 April 2006 “Procurement drives the third wave of BEE”), Vuyo Jack argues that preferential procurement is imperative in order to ensure BEE. He notes in its 1997 Green Paper on public sector procurement reform, released by former Ministers Trevor Manuel and Jeff Radebe, Government came up with a novel design that revolutionised the approach to conducting business in South Africa. This rested on the influence that the government has in economic development.

According to Jack (2006:1), preferential procurement is crucial because it has a trickle-down effect, which guarantees that the companies functioning in the country contribute in a robust manner to BEE. He adds that this trickle-down effect boosts entrance into the market for Black contractors and ensures that they are able to sustain their businesses without over-reliance on one sector of the economy.

The subject of this study is contentious. There have been numerous debates on the effectiveness and value of BEE. The goal of the study is to determine the impact of BEE on the tendering policies and procedures in the Ministry of Public Works, KwaZulu-Natal (KZN).

The study will identify problems with the implementation of BEE within the Ministry. Insight will be gained into how BEE policies are structured and the particular goals the Ministry has set itself. This information will then be used to discuss the effect that BEE has in practice, with particular emphasis on the tendering processes of the Ministry.

The study will provide a brief introduction and background to BEE practices and perspectives in South Africa. The methods used by the researcher to gather the data and research material that will be analysed to meet the objectives of this research will also be discussed. These methods include a literature review based on material from newspapers, the Internet, online libraries, books, and journals. In addition, data will be collected using structured questionnaires and one-on-one interviews with senior officials identified in the population group within the ministry.

Finally, the study will present a set of recommendations and conclusions that will be supported by verifiable data from the Ministry. The recommendations will hopefully assist in improving BEE practices in tendering policies and procedures in the Ministry.

### **1.3 MOTIVATION FOR THE STUDY**

Amongst other key areas discussed by the Public Sector Anti-Corruption Conference in November 1996 was the need to firm up systems of financial and management control in state institutions, particularly around procurement (Gomomo, 1999:1). That this is a matter of urgency is confirmed by the Auditor General's 1999 Annual Report, which states that many cases of non-adherence to procurement procedures have been reported, whose causes vary from ignorance to deliberately ignoring rules and regulations (Gomomo, 1999:1)

The apartheid government prevented Black people from participating in South Africa's economy, other than as providers of low-and unskilled labour. The democratically elected government launched a number of empowerment initiatives. Affirmative procurement and other development initiatives are a new concept in South Africa. BEE is one such initiative.

A paper by the Black Economic Empowerment Office notes that former State President Mr Thabo Mbeki, affirmed the need for "... rigorous and visible progress in this area, so as to ensure not only the distribution of wealth and economic power in line with the demographics of our country; but also to ensure that our economy and society as a whole can benefit from the wisdom and potential of all South Africans, and that the benefits of such empowerment are shared across society, and not just by a few".

The researcher believes only legislation will ensure compliance, since prescribed empowerment targets are usually not attained. The researcher is of the opinion that preferential procurement is an effective instrument to promote BEE in the South African economy. Therefore, there is a need for government departments to review their procurement policies in order to enhance their impact on BEE.

A basic prerequisite for procurement policy is that it should comply with the national economic growth strategy, recognising that South Africa is now operating in a very different

environment. It is, therefore, important to assess whether the BEE processes used by the Ministry of Public Works, especially regarding tenders, are in line with the requirements of the Constitution and other empowerment legislation. The researcher's experience in working within different government institutions provided the motivation for this study.

The challenges facing government institutions are, amongst others:

- complying with BEE legislation; and
- high levels of corruption in awarding tenders.

It is for these reasons that the researcher decided to conduct this study. The topic has not been extensively investigated, and is a relatively new and evolving subject.

## **1.4 AIMS AND OBJECTIVES OF THE STUDY**

The aim of the study is to analyse the tendering processes and procedure within the Ministry of Public Works in KZN in the context of BEE. Amongst other things, this study intends to evaluate whether the Ministry of Public Works complies with the provisions of the Constitution. In light of the above, the broader research objectives are to:

- determine the impact on BEE of tendering processes and procedures within the Ministry of Public Works;
- examine and analyse the tendering process used by the Ministry when procuring services; and
- furnish conclusions and make recommendations in the field of study.

## **1.5 KEY QUESTIONS OF THE STUDY**

In order to fulfil the objectives of this study the following questions were posed:

- What are the objectives of BEE?
- Which tendering procedure or process is used by the Ministry when buying goods and services?
- How does this process support BEE?



- What measures are being implemented to ensure that Historically Disadvantaged Individuals (HDIs) receive first preference?
- What are the consequences of non-compliance?
- What are the major obstacles to implementing BEE policies?

## **1.6 RESEARCH METHODOLOGY**

The theoretical approach of this study was based on the literature review of available texts, journals, papers, magazines, legislation and other publications. The descriptive method of research was pursued in order to portray and present an assessment of the present situation with regard to the implementation of BEE in tendering policies and procedures within the Ministry of Public Works, KZN. Such assessment was best obtained through soliciting the opinions and perceptions of officials who are responsible for the implementation of the policies.

Two groups of respondents were surveyed, namely: staff members in the Department of Public Works and service providers. Structured questionnaires were developed and a questionnaire-based survey was conducted amongst the identified groups. Data were analysed and results presented in a tabular form and depicted using graphic representations. A discussion was presented on achievements and shortcomings. Finally, conclusions and recommendations were made.

## **1.7 LIMITATIONS**

It is always anticipated that undertaking a study of this nature would present limitations. The following are some of the limitations of this study:

- the study was not conducted in all four regions in the province of KZN and was limited to one region, namely, the eThekweni Region due to budgetary and logistical constraints;
- the study focused only on the procurement department. There was a danger that staff in this department were too defensive since this topic is a sensitive one;

- top management who, in general, have sometimes been involved in corrupt activities, were defensive and uncomfortable about the study;
- the scope of the study was limited by the unavailability of time, which was four months;
- the cut-off date for all the questionnaires was one month and some individuals refused to participate; and
- the language used for the questionnaires was English, and some of the contractors are Zulu-speaking people who were not proficient in English.

## 1.8 CLARIFICATION OF KEY TERMS

It is important to elucidate the key terms to be utilised throughout the research process.

### “Department” versus “Ministry”

While this study centres on the Ministry of Public Works the specific of the tendering process, which is the core of this study, are carried out by the Department of Public Works and because the Ministry has oversight over the department, certain processes are carried out by both the Ministry and the department. As a result of this the term “Department” and “Ministry” are sometimes used interchangeably in this report.

### Administration

The word "administration" is from the Middle English *administracioun*, deriving from the French *administration*, which is itself derived from the Latin *administratio*: a compounding of *ad* ("to") and *ministratio* ("to give service") (<http://en.wikipedia.org/wiki/Administration>).

### Public administration

According to Fox, Schwella and Wissink (1991:2), public administration is defined as:

- those systems, of structures and processes;
- operating within a particular society as environment;
- with the objective of facilitating the formulation of appropriate governmental policy; and
- the efficient execution of the formulated policy.

### **Black Economic Empowerment (BEE)**

It is an incorporated and coherent socio-economic process positioned around the milieu of South Africa's national transformation programme, namely the RDP. It aims to rectify the inequalities created by the apartheid government by seeking to transfer equity and grant ownership, management and control of South Africa's financial and economic resources to the majority of its citizens. The Report of the Black Economic Empowerment Commission, 2001 notes that BEE "seeks to ensure broader and meaningful participation in the economy by Black people to achieve sustainable development and prosperity".

### **Emerging Contractor**

Refers to a small enterprise which is two-thirds owned, controlled by South African citizens who meet the requirements of the definition of previously disadvantaged individuals, and who are confronted with hindrances derived from the apartheid legacy (Construction Industry Development Board Bill, Government Gazette No. 20692, 10 December 2002:2).

### **Historically Disadvantaged Individual (HDI)**

It is defined as meaning: "a South African citizen who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993); and/or who is a female; and/or who has a disability, provided that a person who obtained South African citizenship on or after the coming into effect of the interim Constitution, is deemed not to be an HDI" (Constitution 108 of 1996).

### **Public Management**

According to Fox *et al* (1991:2), public management is defined as a professional and practical effort to reach objectives efficiently and is usually concerned with a pro-active approach to create a better future for people.

### **Procurement**

Hugo, Badenhorst-Weiss and van Biljon (2004:208) define procurement as a wide range of activities related to the acquisition, quality assurance, receipt and storage of purchased

products and services required by an organisation to produce its own product or services. Procurement may also be regarded as a process that creates, manages and fulfils contractors relating to:

- the provisions of supplies, services or engineering and construction work;
- the disposal of property;
- the hiring of anything; and
- the acquisition and granting of any rights or concessions

(Watermeyer, 2003:11)

## **1.10 STRUCTURE OF THE STUDY**

The research study is structured as follows:

### **Chapter one – Introduction and structure of the study**

This chapter provides an introduction and background to the topic, outlining the approach taken, justification for and limitations of the study, and clarifies the key terms to be used.

### **Chapter two - Conceptual Framework of the study**

This chapter focuses on the conceptual framework. BEE within the context of public administration is also discussed. The discussion begins by outlining the principles of Public Administration, and BEE and procurement within this framework.

### **Chapter three - Literature Review**

In this chapter a literature review is undertaken using books, journals articles, policy documents and electronic sources (Internet) for the purposes of understanding the theory and research area more comprehensively.

### **Chapter four – Operational Concept**

In this chapter the researcher outlined the operational framework used by the Ministry of Public Works to meet the developmental obligations set out in the BEE and legislative frameworks.

### **Chapter five – Research Methodology**

Chapter five of the study describes the research methodology, namely: the research design, target population, data collection, measurement instrument, questionnaire administration and data analysis.

### **Chapter six – Research Findings**

This chapter analyses the findings of the study. The challenges and gaps will be identified from the research findings.

### **Chapter seven – Conclusions and Recommendations**

The final chapter of the study summarises the conclusions of the research, and furnishes recommendations.

## **1.11 CONCLUSION**

This introductory chapter has presented an overview of the research focus of the study. It has done so by providing a succinct background and rationale to the study and outlining the aims and objectives of the study. Further, this chapter has discussed the methodology used as well as the possible limitations these may present. The chapter concludes with a clarification of key terms used in the study and a chapter breakdown of this dissertation.

# **CHAPTER 2: THEORETICAL BASIS FOR BLACK ECONOMIC EMPOWERMENT WITH SPECIAL REFERENCE TO THE MINISTRY OF PUBLIC WORKS IN KWAZULU-NATAL**

## **2.1 INTRODUCTION**

For the purposes of this chapter, it is important to contextualise the discussion within the discipline of Public Administration in order to determine the theoretical perspective and the link between public administration and Black Economic Empowerment (BEE). This is accomplished by examining the fundamental issues and the principles of public administration, its function, and approaches to public policy implementation. In the context of public administration, BEE is seen as a process that, through preferential procurement, facilitates effectiveness in the public sector on the one hand, and policy implementation, on the other.

## **2.2 PRINCIPLES OF PUBLIC ADMINISTRATION**

Bayat and Meyer (1994: 33) note that principles may be defined as the:

“ultimate source or origin of anything.... a general comprehensive law, or truth accepted as the basis or fundamental ground for other laws and doctrines deduced from it.....”. They add that, viewed from a broader perspective, principles may be defined as a set of basic criteria for the scientific analysis and understanding of natural and social phenomena (Bayat & Meyer, 1994:33).

Sections 195 and 196 of the South African Constitution provide that public administration must be governed by the democratic values and principles preserved in the Constitution, including the following:

- (i) “The promotion and maintenance of a high standard of professional ethics;
- (ii) The promotion of efficient, economic and effective use of use of resources;
- (iii) A public administration which is development-oriented;
- (iv) The impartial, fair, equitable and unbiased provision of services;

- (v) Response to people's needs and the encouragement of public participation in policy making;
- (vi) The accountability of public administration;
- (vii) The fostering of transparency by providing the public with timely, accessible and accurate information;
- (viii) The cultivation of good human resource management and career development practices to maximize human potential; and
- (ix) A public administration, which is broadly representative of South African people, with employment and personnel management practices based on ability, objectivity, fairness and the achievement of broad representation by redressing the imbalances of the past."

The Constitution also provides that the above principles apply to:

- (i) administration in every sphere of government (including public service);
- (ii) organs of state; and
- (iii) public enterprises/entities.

## **2.3 FUNCTIONS OF PUBLIC ADMINISTRATION**

Gildenhuys and Knipe (2000:57) observe that in order to perform the functions required to realise government goals and objectives, government departments are bound to supply and deliver goods and services to communities. They further state that in order to fulfil their law and order and protection functions, social welfare functions and economic welfare functions, public authorities render several kinds of public services. These government functions can be clustered into line functions (representing those government activities that contribute directly to the realisation of goals and objectives) and staff functions.

Administration in the public sector is an overarching activity, consisting of specific functions pertaining to the execution of political policy (Raga 2001:66).

Cloete (1998:85) is of the opinion that the functions executed in administrative executive institutions can be classified into five groups of activities namely: generic administrative, delivery, functional (line), auxiliary and instrumental activities.

### **2.3.1 Generic administrative**

The generic administrative functions performed for the purposes of policy-making focus on the conceptual (initiatory and innovative) and directive parts of the functions. In other words, the part of the generic administrative functions performed or directed by the legislature, the political executive institutions, office bearers, the central directive institutions such as the Auditor-General, the Department of Finance, the Department of the Public Services and Administration and the head office (Cloete 1998:140). These leading institutions and functionaries will concentrate on directives (legislation, regulation and instructions) that will determine:

- (i) what must be done (objectives to be reached);
- (ii) by whom (personnel) action will be taken;
- (iii) which organisational units (institutions) will be involved;
- (iv) how (with what procedures) the action will be taken;
- (v) how the activities will be financed; and
- (vi) who will control the activities undertaken (Cloete, 1998:140).

### **2.3.2 Delivery**

The parts of the generic administrative functions performed for policy implementation may appropriately be referred to as executive or delivery functions performed by, or under the leadership of supervisors who are subordinate to the top officials stationed in the head office (Cloete, 1998:161). The delivery part of generic administrative functions performed by supervisors (managers) functioning under the top official (top manager) will be the delivery parts of:

- (i) the policy process;
- (ii) the staffing functions;
- (iii) financing activities;
- (iv) organising functions;
- (v) operational work processes; and
- (vi) checking and reporting of control (Cloete, 1998:160).



The implementation of the BEE policy could appropriately be defined as a delivery process due to fact that Cloete (1998:158) clearly states that the parts of the generic administrative functions executed for policy implementation may be referred to as executive or delivery functions performed by, or under the leadership of supervisors who are subordinate to the top official stationed in the head office.

### **2.3.3 Functional (Line)**

Every public institution is created to provide specific products or services. For each product and service, appropriate functions must be performed. According to Cloete (1998:300), every public institution is identified and characterised by its functional activities (also known as line functions). He adds that the functional activities undertaken by public institutions are determined by the physical and social conditions prevailing in the state or community, as well as the ideologies of the functionaries who hold power in the legislative and governmental institutions.

Public institutions exist for two main purposes, namely to:

- (i) maintain law and order; and
- (ii) provide the population with essential goods and services, which private enterprises cannot provide for various reasons (Cloete, 1998:301).

Cloete (1998:306) stresses that in a democratic state the nature and extent of functional activities performed by public institutions at all levels of government are determined largely by the philosophies (policies) of the political party/parties in power in the legislature. BEE and other changes in policy direction, which the ANC ushered in, in 1994, demonstrate the important role of political parties in determining the nature and the extent of the operational activities of public institutions.

The ANC has pointed out that, to a large degree, affirmative action and BEE will be accomplished through the enforcement of equal rights and the provision of good government and equal services for all the citizens of South Africa (FW de Klerk Foundation, 2005:5). Hence the provision of equal, high quality education; health and social services; regional

equalisation and equal protection from discrimination will go a long way towards fulfilling the goal of black empowerment (The FW de Klerk Foundation, 2005:5). This demonstrates that the functional activities undertaken by public departments are established by the physical and social conditions prevailing within the government or community.

#### **2.3.4 Auxiliary**

For the effectiveness of the generic administrative functions, as well as the functional and the instrumental activities, a large number of auxiliary functions must be executed. Cloete (1998:285) notes that the auxiliary activities are performed to improve the effectiveness and efficiency with which the other functions are performed, or to make the performance of the other functions possible.

The auxiliary activities which are commonly performed in or for every public institution are research, providing legal services, record keeping, public relations, notification functions (official gazettes and other publications); constructing and maintaining information services and the provision of infrastructure and materials (Cloete, 1998:285-290). Some of these auxiliary activities require properly qualified and skilled employees for cost-effective and efficient performance. It is, therefore, important that political office-bearers and officials familiarise themselves with auxiliary functions to ensure that sufficient arrangements are created for their performance.

#### **2.3.5 Instrumental**

Every official employed in a public institutions, from the top administration down to the lowest-graded employee, will be required to perform personal activities, which are instrumental in the performance of his/her work (Cloete, 1998:292). In addition, every public official will have to meet impersonal instrumental requirements to enable him/her to work, for example, the official must be provided with a workplace, tools, other equipment and possibly transport in order to perform his or her work (Cloete, 1998:292).

It should be emphasised, however, that the generic administrative and managerial processes will be performed in all the specialised functional fields, but they will be adapted to meet the

specific needs of each functional field (Cloete, 1998:88). Finally, Cloete (1998:88) notes that the auxiliary and instrumental activities are indeed also generic functions, which will be performed in all public institutions to enable the functionaries (political/executive office-bearers and officials) to perform administrative/managerial processes as well as functional/line and instrumental activities.

## **2.4 PUBLIC ADMINISTRATION APPROACHES**

Raga (2001:83) notes that the rapid expansion of administrative theory in recent times makes it difficult to do justice to all the theories and theorists. There are so many administrative theories that it is almost impossible to reach agreement on how they should be classified since they no longer fit into a neat tabulation (Raga, 2001:83). According to Raga (2001:83), these theories share only one common element; that of concentrating on how people, the pinnacle of social organisations, get things done. This research study will focus on two approaches to public administration, namely: the administrative process approach and the management approach.

### **2.4.1 Administrative process approach**

The administrative process approach is a straightforward description of the administrative steps that a civil servant supposedly follows in the execution of his/her daily tasks. This approach was introduced in South Africa in 1963 and is a supreme example of a “how”? attitude towards the study of public administration (Bayat & Meyer, 1994:106). This approach can also be regarded as:

#### **(i) A closed-ended approach**

The administrative process approach is a closed-ended approach, which is based on the steps that are supposedly followed in the execution of an administrative task and nothing else. It is firmly embedded in public administration in a closed-ended frame of mind (Bayat & Meyer 1994:108):

“...from a purely academic point of view, the administrative process has the effect of enclosing thought patterns in the sense that it breaks up the unity of public administration

and leaves it hopelessly stranded in separate sections and in spite of purporting to be a continuous process the net effect was exactly the opposite since it divided the public administration course into separate units with no links among them”.

## **(ii) The “how?” approach**

Bayat & Meyer (1994:108) note that for twenty years, the approach of public administration was reduced to the “how?” approach of six administrative processes. According to Bayat and Meyer (1994:110), the administrative process approach in essence dealt with “how” a civil servant performs his/her functions. If the adherents of this approach are to be believed, there is only one way in which a civil servant is supposed to perform his/her functions.

The “how” approach is a closed-ended and consequently also a prescriptive approach. Its prescriptive nature allows no deviations and was, therefore, intellectually restrictive in the extreme (Bayat & Meyer, 1994:110).

The descriptive “what” period preceded the administrative “how?” period and provided an excellent description of the civil service. The “how” period brought no positive change to the content of public administration in South Africa. Scientific progression moves from a descriptive explanation of the “what” and “how?” to an understanding of “why?” (Bayat & Meyer, 1994:110). Due to the above-mentioned shortcomings of the administrative process approach, a new approach was necessary.

### **2.4.2 Management Approach**

Aspects of public administration such as socio-political issues, the public environment, public functions, skills and technology were funnelled through the skills of public management, referred to as “*the central linking concept*” (Bayat & Meyer, 94:116). A critical examination of the management approach to public administration reveals that it is the logical successor to the outdated administrative process approach. According to Schwella (1992:28), public management is visualised in terms of functions, skills, application, supportive technology and the techniques of public management. Bayat & Mayer (1994:116) note that management approach is: “therefore at best a dehumanizing technical skill forced us to by the wastages of a grossly mismanaged public sector. After all, a management approach is based on the

assumption that the civil service is inefficient. It arose as a result of inefficiency. However, the inefficiency of a civil service cannot be removed through the application of management principles, but only through proper education”.

Public management is sold as a technical device, uncompromised by either side of the ideological spectrum and holding the sole objective of serving the interests of the “clients of the state” (Thorne, Kouzmin & Borders, 2004: 412).

### **2.4.3 The Cloete-Schwella Approach**

Schwella (in Haripersad, 2003:48) emphasises the importance of environment (general and specific) in public administration. The general environment includes: political, economic, cultural, technological and social. The specific environment includes: regulators, suppliers, consumers and competitors.

Cloete (1998) stresses the generic processes in public administration, namely: policy-making, organising, financing, staffing, work methods and procedures and control, while Schwella (1992) stresses the importance of the environment, namely: the general and specific environment in public administration (Haripersad, 2003:48).

According to Haripersad (2003:48), technological change makes it possible to introduce new management systems into government. Information and data of all kinds can be gathered and transmitted cheaply and transformed into performance information which, in turn, allows management to be decentralised (Haripersad, 2003:48). This could lead to extensive management change in government, compared to the primitive technological base of the traditional model of administration.

### **2.4.3 Systems Approach**

Systems theory is multidisciplinary in its application (Bayat & Meyer, 1994:86). Ashforth (1992:376) notes that:

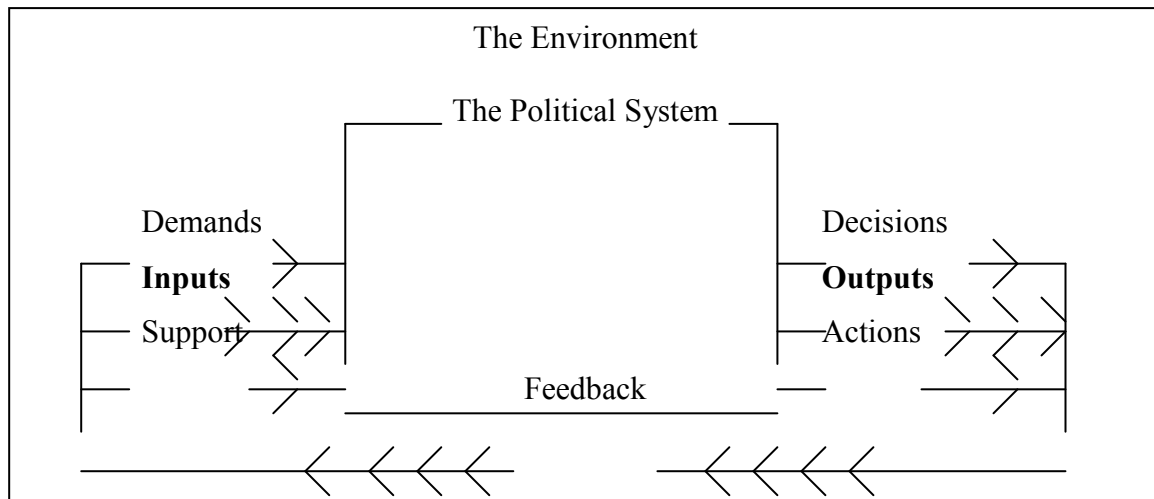
“...the focus of systems theory is on the set or the whole, the interplay between the units, and the relationship with the larger environment. From this focus, a number of well-known

systems concepts can be derived, including open versus closed (to the environment), inputs / throughput / outputs, homeostasis and equilibrium, and differentiation and integration (of units)” . In terms of the systems viewpoint, a society is deemed to comprise several interrelated subsystems, of which systems of governance are one (Bayat & Meyer, 1994:86). Easton (in Bayat & Meyer, 1994:87) is of the opinion that the relationship among the various elements of the state system corresponds to general premises, namely:

- **System:** It is useful to view political life as a system of behaviour.
- **Environment:** A system is distinguishable from the environment in which it exists and open to influence from it.
- **Response:** Variation in the structure and processes within a system may usefully be interpreted as constructive or positive alternative efforts by the members of a system to regulate or cope with stress flowing from environmental as well as internal sources.
- **Feedback:** The capacity of a system to persist in the face of stress is a function of the presence and nature of the information and other influences that return to its actors and decision makers (Bayat & Meyer, 1994:87).

Easton (in Bayat & Meyer, 1994:87) suggests that the basis of the analytical model underpinning much of the theory of public administration in South Africa is a system comprising the many public institutions that interact with their environment in such a way that it remains able to authoritatively allocate values in society over time. A simple graphic presentation of this view is provided hereunder:

Figure 2.1 Systems Approach to Public Administration



Source: Bayat & Meyer (1994:87)

## 2.5 PUBLIC POLICY IN PUBLIC ADMINISTRATION

Public policy will also dictate the path taken in public administration. Public institutions cannot function in a vacuum. For the state to successfully deliver public services, proper guidelines must be set to direct public administrators/officials. According to Cloete (1998:135), there will first be a period during which the public will become aware of a need, and then the public or interest groups will start making representations to the authorities to satisfy the need. Public administration as a discipline concerns itself with the functioning of the state in order to fulfil public needs.

“Traditionally, public administration in South Africa has focused on the description of the network of public institutions that exist to provide public goods and services for the maintenance of the South African state” (Bayat & Meyer, 1994:86).

### 2.5.1 Levels of Policy

Cloete (1998:128) indicates that every state has its own peculiar structure of public institutions. However, there will always be a hierarchy of institutions namely: legislative,

political executive and administrative executive institutions. The hierarchy of institutions is illustrated in the following table:

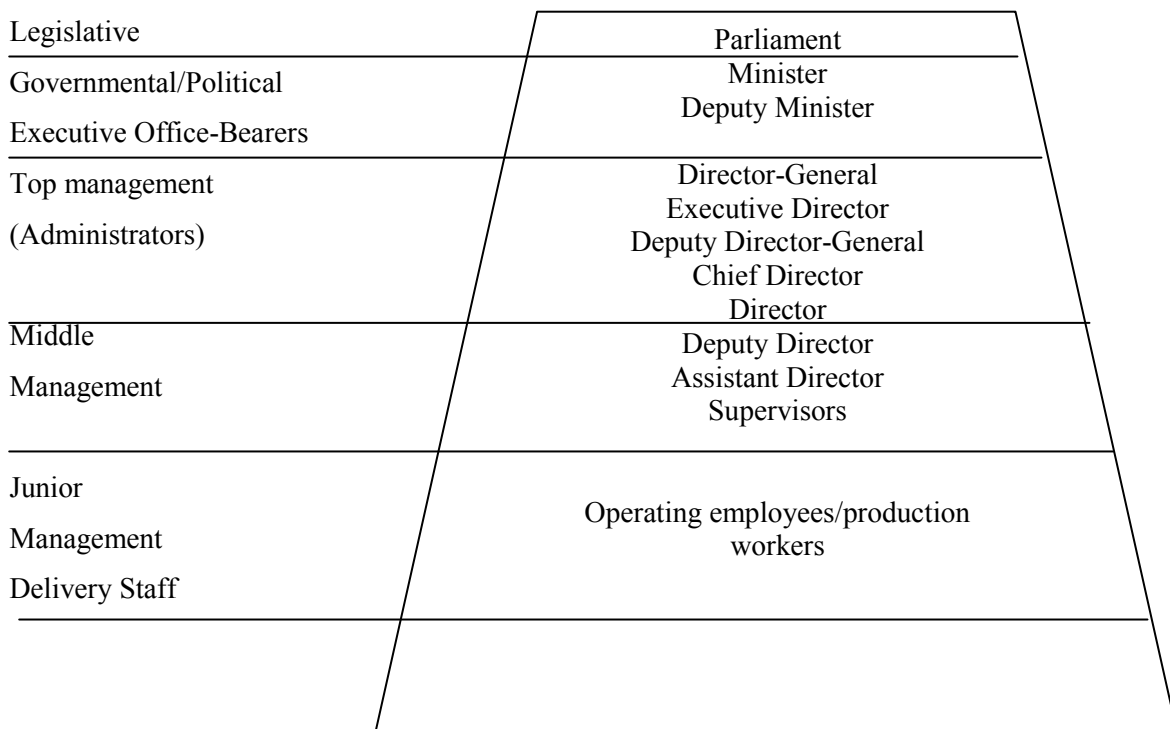
Table 2.1: Hierarchy of institutions

Legislative institutions	e.g. Parliament, provincial legislatures and municipal councils
Political executive institutions	e.g. the Cabinet, provincial executive councils and management committees of the municipal councils
Administrative executive institutions	e.g. state departments and parastatal institutions

Source: Cloete (1998:128)

Cloete (1998:128) adds that every institution will consist of a hierarchy of functionaries. A simplified hierarchy of public functionaries for a state department is presented in the following diagram:

Figure 2.2: *Hierarchy of Institutions and functionaries for a state department*



Source: Cloete (1998:128)



The activities of each of the functionaries employed in a public institution are regulated by policy directives such as legislation, regulations, proclamations and instructions issued in terms of the legislation, and orders given to him/her by his/her supervisors (Cloete, 1998:127).

## **2.6 BLACK ECONOMIC EMPOWERMENT IN THE CONTEXT OF PUBLIC ADMINISTRATION**

BEE policy initially originated from public administration policies and is associated with the goal of delivering to the public. For BEE to succeed, policy implementation must be cost effective, efficient and governed by the principle of equity. According to Campbell and Hackett (2006:44), BEE was put in place to mend the damage and close the void in South Africa's economy and society caused by apartheid. The systematic exclusion of Indians, Africans and Coloureds from the South African economy led to poverty and suffering, not just for individuals but for the economy as well. Preferential procurement policy and the BEE policy have a similar purpose in giving preferential treatment to parties that deliver on certain transformational expectations.

Because Public Administration is about serving the public, the practice cannot claim to be effective if part of this public has been systematically relegated to a lower status. The promotion of an equitable public is as such fundamental to public administration practice. It is in this respect that this study conceptualises public administration as being intricately linked to the implementation of BEE policies.

It has been stated previously in this chapter that policy making is part of the generic administrative function performed or directed by the legislature and the political executive institutions and so on. BEE is an empowerment policy. Cloete (1998:292) argues that policy is arrived at through the performance of a number of functions. For the performance of each of these functions a series of decisions has to be taken and decision-making is part of the instrumental functions in generic administrative functions.

## **2.7 CONCLUSION**

In conclusion, BEE is a government initiative to empower South African citizens. It is driven by centralised public administration policies and is linked to the public good. To be successful, BEE must be guided by the principles of cost effectiveness, efficiency and equity.

Sections 195 and 196 of the South African Constitution set out the democratic values and principles, which must be adhered to by public administration. This chapter examined Cloete's research on the functions performed in administrative executive institutions, which can be classified into five groups of activities, namely: the generic administrative, delivery, functional (line), auxiliary and instrumental activities. Furthermore, four dominant approaches of public administration have been identified namely: the administrative process approach, which includes the closed-ended, and the "how?" approach, the management approach, the Schwella-Cloete approach and the systems approach. The role of public policy in public administration has been outlined and lastly the link between BEE and public administration had been discussed.

## **CHAPTER 3: LITERATURE REVIEW**

### **3.1 INTRODUCTION**

In this chapter a literature review is undertaken using books, journals articles, policy documents and electronic sources (Internet) for the purpose of understanding the theory and the research area more comprehensively.

### **3.2 BACKGROUND TO BLACK ECONOMIC EMPOWERMENT**

According to Jack and Harris (2007:4) Black Economic Empowerment (BEE) is the result of an evolutionary process that started with the abolition of apartheid. A number of policies implemented by the apartheid government prevented Black people from participating in economic development in South Africa, and granted control of all resources to White people.

Apartheid resulted in Black people being severely underskilled, which provided White business with an economic excuse for not including them in employment positions of any consequence (Jack & Harris, 2007:5). The fall of apartheid coincided, roughly, with the collapse of communism. Capitalism grew to new heights and became a greed-driven economic system (Jack & Harris, 2007:5).

The first democratic elections in April 1994 marked the end of the apartheid system and the advent of democracy in South Africa. This was followed by a major government effort to improve the standard of living of previously disadvantaged people. According to Khosa (2001:2), in order to unpack the social and political transition in South Africa it is important to understand the dynamics of the political regime undergoing transformation, the possibilities and limits of deepening democratic governance and questions of economic justice within the context of processes that exclude the poor from opportunities.

According to Jack and Harris (2007) after the first democratic elections, the new government understood the need for a transfer of the wealth. Various policies were implemented to promote Black participation in the mainstream economy. These included:

- The Employment Equity Act, aimed at making South African workplaces more representative of the country's demographics;
- The Skills Development Act, to upgrade the skills of the workforce, particularly Black workers;
- The Preferential Procurement Policy Framework Act to empower Black businesses.

Jack and Harris note that BEE has been in existence in various forms since the fall of the apartheid government and merely refers to Black people demanding a slice of the economic cake. Jack and Harris (2007:6) define BEE as a government-driven initiative to deracialise the economy by providing Black people with an opportunity to own and manage mainstream economic resources. The authors add that BEE is trying to achieve economic equality, not through redistribution, but through growth by promoting equal exposure to the mainstream economy for Black and White people.

### **3.3 EMPOWERMENT AND TRANSFORMATION**

Jack and Harris, (2007:7) state that to increase competitiveness, the athlete must now show preference for the right leg in training. While the left leg could never be ignored or excluded, the right leg must get preferential training in order to catch up with the left leg. Once both legs are equally strong, the athlete is able to compete at the highest level.

There are different views of what empowerment constitutes. In South Africa, the word empowerment is associated with development and enabling historically disadvantaged groups to participate in the economy. Empowerment has been defined by the government as 'an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of Black people that manage, own and control the country's economy, as well as significant decreases in income inequalities' (Woolley, 2005:12).

Meshack Khosa (2001) in his book *Empowerment through economic development* cites John Friedman who defined alternative development as a process of social and political empowerment whose long-term objective is to re-balance the structure of power in society by

making the state's actions more accountable, strengthening the powers of civil society in the management of its own affairs and making corporate business more socially responsive.

According to Khosa (2001:3), Friedman critically appraises the theoretical foundation of empowerment by distinguishing between social, political and psychological empowerment as follows:

- Social empowerment is about access to certain bases of household reproduction, such as supportive life space, surplus time, knowledge and skills, instruments of work, and financial resources. Friedman viewed poverty as a state of disempowerment, as poor households lack the social power to improve the condition of their lives.
- Political empowerment is about access of individuals and household members to the process by which decisions, particularly those affecting their own future, are made. Friedman does not see political empowerment as only the power to vote, but also the power of voice and of collective action.
- Psychological empowerment is about the individual's sense of potency, which is largely a result of successful action in the social and political domains (Khosa, 2001:3).

Empowerment seeks a change in the existing national strategies through a politics of inclusive democracy, appropriate economic growth, gender equality and sustainability, and intergenerational equity.

### **3.3.1 Theorising transformation in South Africa**

There are three broad interpretations of political and economic transformation in South Africa, which are informed by different conceptualisations of the nature of empowerment and transformation (Khosa, 2001:8):

#### **3.3.1.1 Neo-liberal interpretation**

Khosa (2001) is of the opinion that, from the neo-liberal perspective, empowerment involves decentralisation, that is, the withdrawal of the state from areas of social life and the economy,

especially labour market regulation. He adds that what unites the neo-liberalists is their reliance on markets and the private sector to empower people. The South African government's adoption of the Growth, Employment and Redistribution (GEAR) strategy was seen as a shift to neo-liberalism.

### **3.3.1.2 Radical democratic interpretation**

According to Khosa (2001), radical democratic discourse seeks to transform capitalist development through struggles against patriarchy, racial, gender, and ethnic discrimination, environmental degradation, and other forms of exploitation and subjugation. He adds that although this discourse maintains a vision of grassroots empowerment and radical social transformation, it finds it difficult to translate its vision into alternative political and economic institutions at the national level. This led to the development of empowerment policies in South Africa such as Skills Development, and Employment Equity as well as BEE.

### **3.3.1.3 Social democratic interpretation**

In terms of this perspective transformation in South Africa is seen as a platform where dominant class interests are played out (Khosa, 2008:11). The social democratic interpretation claims that there is an attempt to create a South Africa that is conducive to massive capital accumulation through the privatisation of state assets and the adoption of neo-liberal policies, which will disempower the poor (Khosa, 2008:11).

The three theoretical approaches to empowerment provided by Khosa (2001) are important in understanding South Africa's transformation.

## **3.4 THE EMPOWERMENT REGULATORY FRAMEWORK IN SOUTH AFRICA**

The following are some of the government initiatives created specifically to redress the inequities of the past:

### **3.4.1 The Constitution**

South Africa's Constitution defines equality as including "full and equal enjoyment of all rights and freedoms". According to Section 9(2) of the Constitution, the state has a right to discriminate in favour of certain persons to ensure the achievement of equality. The de Klerk Foundation (2005:6) notes that the Constitution encourages the achievement of equality, and that legislative and other measures to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. One may, therefore, conclude that the BEE Act was promulgated in furtherance of Section 9 of the South African Constitution.

### **3.4.2 The Black Economic Empowerment Commission**

The Black Economic Empowerment Commission was established in May 1998 by the Black Business Council, an umbrella body representing twelve Black business organisations, of which the Black Management Forum (BMF) is one. The Commission released a comprehensive report in 2000. The Commission's approach is based on the principle that a substantial increase in the level of Black participation in South Africa's economy is fundamental to economic growth.

According to the *South Africa Business Guidebook 2002-2003*, the definition of empowerment goes beyond the transfer of ownership of companies. Instead, empowerment is described as:

"an integrated and coherent socio-economic process ... which aims to redress past imbalances by transferring and conferring ownership, management, and control of SA's financial and economic resources to the majority of its citizens and ensure broader participation of black people in the economy in order to achieve sustainable development and prosperity".

The Black Economic Empowerment Commission defines three categories of black empowerment:

- (a) "a "black" company is at least 50.1% owned and managed by black people;
- (b) "black empowered" firms are at least 25.1% owned and managed by black people; and
- (c) "black influenced" firms are 5%-25% black-owned and managed" (The Black Economic Empowerment Commission 2001).

The mandate given to the Commission was to investigate the progress of BEE in order to identify possible barriers and to make recommendations for the future (Engdahl & Hauki, 2001:50). Therefore, the following objectives were set by the BEE Commission:

- “To gain insight into the BEE process through empirical research and to make observations on the pace and results of BEE initiatives during the 1990s.
- To reach conclusions on the obstacles to meaningful participation of Black people in the economy.
- To develop a powerful case for an accelerated National BEE Strategy and to make recommendations on policies and instruments required to guide a sustainable strategy.
- To develop benchmarks and guidelines to monitor the implementation of the National BEE Strategy” (Naledi, 1999:5).

The *South Africa Business Guidebook 2002-2003, Towards a Ten Year Review* reveals that, regardless of the implementation of transformation policies, poverty and unemployment still remain critical issues in South Africa.

According to the BEE Commission Report (2001, “continuing racism across all sectors of society acts as a social impediment, distorting the functioning of markets and reinforcing the marginalisation of black South Africans”. The BEE Commission Report (2001), recommends that the following quotas, among others, be introduced to address these problems:

- “30% of productive land should be in black hands;
- Black equity participation in each sector of the economy should be increased to at least 25%;
- Black people should hold at least 25% of the shares of companies listed on the JSE;
- at least 40% of non-executive and executive directors of companies listed on the JSE should be Black;
- at least 50% of state-owned enterprises and government procurement should go to Black companies;
- at least 30% of the private sector should comprise Black-owned companies; and
- at least 40% of senior and executive management in private sector companies (with more than 50 employees) should be Black” (BEE Commission Report, 2001).



The BEE Commission's report (2001), indicated a pressing requirement for an inclusive BEE strategy, as several BEE initiatives since the 1990s have been unsuccessful in translating into a meaningful transfer of ownership in the country.

### **3.4.3 The Broad-Based Black Economic Empowerment Act 53 of 2003**

The preamble of the BBBEE Act of 2003 indicates that the Act was passed in order to encourage achievement of the Constitutional right to equality, increase broad-based and effective participation of Black people in the economy and promote a higher growth rate, increased employment and more equitable income distribution.

Section 1 of the BBBEE Act defines broad-based BEE as:

“the economic empowerment of all black people including women, workers, youth, people disability and people living in rural areas, through diverse but integrated socio-economic strategies...”.

Section 1 of the Act defines Black people as “a generic term, which means Africans, Coloureds and Indians”. Section 2 of the BEE Act summarises the Act’s objectives as follows:

- (a) “the increase of Black management, ownership and control of enterprises and productive assets;
- (b) the facilitation of the ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective schemes;
- (c) human resources and skills development;
- (d) the achievement of an equitable representation across occupational categories and levels in the labour force;
- (e) preferential procurement; and
- (f) investment in black-owned and managed businesses (Black Economic Empowerment Act, 2003).

The six objectives can only be used to establish targets and observe progress on empowerment (Black Economic Empowerment Act, 2003). The researcher will, therefore, be

guided by the aforesaid objectives when assessing BEE and its impact on tendering policy and procedures within the Ministry of Public Works.

#### **3.4.3.1 A Strategy for Broad-Based Black Economic Empowerment**

Section 11 of the BBBEE Act provides for the issuing, by the Minister of Trade and Industry, of a strategy for broad-based BEE. In March 2003 the strategy was published by the DTI. Section 12 of the Act allows the Minister of Trade and Industry to publish a transformation charter for economic sectors, which has been developed to advance the objectives of the BBBEE Act. According to *South Africa's Economic Transformation: A Strategy for Broad Based Economic Empowerment*, the strategy is supported by four key principles, namely:

- Black Economic Empowerment is broad-based;
- Black Economic Empowerment is an inclusive process;
- Black Economic Empowerment is associated with good governance; and
- Black Economic Empowerment is part of our growth strategy.

#### **3.4.3.2 A balanced scorecard for Broad-Based Black Economic Empowerment**

To guarantee a spontaneous and transparent approach to BEE, the government will utilise the scorecard approach, measuring undeviating ownership and control, human resources development and employment equity, preferential procurement and enterprise development. According to Terrazas (1999:3) the “balanced scorecard” system was approved for the BEE process to guarantee flexibility, as BEE is created across a different economy, with different and exclusive companies working in diverse sectors. However, the scorecard approach forms a framework for the consistent measurement of the improvement of BEE implementation.

Terrazas (1999:3) argues that:

“The Department of Trade and Industry’s (the dti) proposed BEE Scorecard focuses equally (30% of the total score each) on direct empowerment, through ownership (20%) and management (10%) of enterprises and assets; human resource development through skills development (20%) and employment equity (10%); and indirect empowerment in the form of preferential procurement (20%) and enterprise development (10%). The remaining (10%) is to be determined by the sector or enterprise and allows for flexibility according to the unique

circumstances and this could include corporate social investment, beneficiation of raw materials or the support of rural enterprises”.

This flexibility will permit a company with no Black ownership to continue scoring well on the scorecard, by stressing the other important areas, such as skills development and procurement. According to the article Code for Better BEE, Code 000 puts the generic scorecards in place to assess the BEE position of the business, providing a score for that business out of 100 as per the following table:

Table 3.1: The generic BEE scorecard

THE GENERIC BEE SCORECARD		
CORE COMPONENT	INDICATORS	SCORE
<b>Direct empowerment score</b>		
Equity ownership	% share of economic benefits	20%
Management	% black persons in executive management and/or executive board and board committees	10%
<b>Human development &amp; employment equity score</b>		
Employment equity	Weighted employment equity analysis	10%
Skills development	Skills development expenditure as a proportion of total payroll	20%
<b>Indirect empowerment score</b>		
Preferential procurement	Procurement from black-owned and empowered enterprises as a proportion of total procurement	20%
Enterprise development	Investment in black-owned and empowered enterprises as a proportion of total assets	10%
Residual	To be determined by sector or enterprise	10%
<b>TOTAL SCORE</b>		<b>100%</b>

Source: Code for Better BEE

Mulder (2005:5) summarises the application of the BEE Score Card as follows:

- “When applying the broad-based BEE scorecard to design, implement, measure and report on Broad-Based BEE, one will need to understand and apply all principles presented in the Code of Good Practice, especially those relating to the specific

element measured. The raw score for each indicator on the scorecard is determined based on the set targets;

- The percentage score for each element is determined by multiplying the raw score to weightings applicable to the individual elements or indicators. The sum of all indicators for a specific BEE element is the percentage score for that BEE element;
- In BEE elements that are subject to a sub-minimum score no BEE will be accorded for that specific element if the total element score is less than the sub-minimum score;
- Discount Provisions: In circumstances where an enterprise does not achieve the sub-minimum score for ownership, the element score it has achieved, after applying the sub-minimum will be multiplied by a factor of 70% to arrive at the broad-based BEE percentage score for the enterprise; and
- Bonus Provisions: The total weighting applicable to each element is as presented on the BEE scorecard. An enterprise cannot be awarded an element percentage score higher than the weightings for that element, except in the case where it has been specifically provided as a bonus provision in addition to the weightings”.

#### **3.4.4 Preferential Procurement Act**

According to Caird Consulting (2006:2), all enterprises operating in South Africa are encouraged to concentrate the majority of their spending with companies that have a high BEE score or new enterprises. Preferential procurement is a way of strongly encouraging all companies to develop a BEE profile with an ever-increasing score, and to spend money with new enterprises.

Government is reviewing its preferential procurement policy in order to enhance its impact on BEE. The enabling legislation on BEE provides that all government departments, state-owned enterprises and public agencies must take into account any code of practice issues in terms of the legislation in determining and implementing their preferential procurement policy.

Preferential procurement also uses scorecards. The following table represents the criteria for deriving a score for preferential procurement:

Table 3.2: The criteria for deriving a score for preferential procurement

Criteria	Weighting points	Compliance target
BEE procurement Spend from Suppliers based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	15	70%
BEE Procurement Spend from qualifying Small Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%
BEE Procurement Spend from Exempted Micro Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	1	5%

Source: Broad-Based Black Economic Empowerment Act

Preferential procurement is important because it has a trickle-down effect, which ensures that the companies operating in South Africa contribute in a robust manner to BEE. The implications of the trickle-down effect of preferential procurement are that it increases market access for Black companies and ensures their sustainability by decreasing heavy reliance on one sector of the economy.

The Preferential Procurement Regulations of 2001 set R500 000 as the cut-off point for deciding whether the 80/20 or 90/10 preference point system would be used to award a tender. Tenders with a rand value up to or equal to R500 000 would use the 80/20 point system. In other words, a maximum of 80 points would be awarded for price and functionality and a maximum of 20 for contracting with HDIs and supporting RDP goals. Tenders above R500 000 would award a maximum of 90 points for price and functionality and a maximum of 10 points for contracting with HDIs and supporting RDP goals. The same system would apply when selling or letting assets.

The Preferential Procurement Policy Framework Act (PPPFA) of 2000 preceded the BBBEE Act of 2003 and there was a misalignment between the two laws. The PPPFA used HDI

position as a criterion in awarding state contracts, while the BBBEE Act considered a company's overall BEE score on up to seven indicators. One of the unplanned outcomes of the PPPFA was a practice called “fronting”, whereby White companies use token Black representatives whose names assist them to win state contracts, although they have no real power in the organisation that tenders. There were also some questions as to whether it was in fact constitutional to differentiate racially when awarding state tenders.

It was in this milieu that the Draft Preferential Procurement Regulations were published in August 2009, the main purpose being to align these with the BBBEE Act of 2003. The main changes were:

- Tenders would be awarded on the basis of the BEE rating of a bidder, rather than HDI status and RDP goals;
- The threshold to distinguish between the 80/20 and 90/10 preference points systems was raised from R500 000 to R1 million to support SMME development; and
- The new regulations would apply to all organs of state, rather than just government departments and certain public entities.

Broad-based empowerment consists of seven elements of the Codes of Good Practice, while narrow-based empowerment concentrates on Black ownership and control.

### **3.5 CONCLUSION**

The South African government promotes BEE transactions as a means of increasing corporate ownership by the Black majority population. This chapter has explored empowerment and transformation in South Africa. The empowerment regulatory framework has been discussed for the purposes of understanding the legislative theory and the research area more comprehensively. It is worth mentioning that with the collapse of apartheid and the election of the Government of National Unity, many corporations that had withdrawn from South Africa returned with the intention of recovering their lost positions. In addition, new competitors, attracted by South Africa's transformed economic status, began to establish a foothold in the South African market.

# **CHAPTER 4: BLACK ECONOMIC EMPOWERMENT IN PRACTICE: PREFERENTIAL PROCUREMENT IN THE DEPARTMENT OF PUBLIC WORKS - KZN**

## **4.1 INTRODUCTION**

Government programmes have attempted to help Small, Medium and Micro Enterprises (SMMEs) through financial assistance, tax breaks and the introduction of preferential procurement (Moodley, 2005:44). According to *South Africa's Economic Transformation, A Strategy for Broad Based Black Economic Empowerment*, preferential procurement is a positive tool to advance Black Economic Empowerment (BEE). The enabling legislation on BEE states that all government departments and state-owned enterprises must consider any Code of Good Practice issues in implementing their preferential procurement policy (*South Africa's Economic Transformation: A Strategy for Broad Based Black Economic Empowerment*). The focus of this chapter is to outline the operational framework used by the Department of Public Works to operationalise BEE principles and obligations as set out in relevant policies and legislation.

## **4.2 PROCUREMENT OF GOODS AND SERVICES**

According to the paper on procurement of goods and services by means other than through the invitation of competitive bids, this provision states how government's Supply Chain Management (SCM) system should be managed and also gives a constitutional right to every prospective supplier to present goods and services to the organ of the state when required.

The SCM of procuring of goods and service by means of public advertisement, including publication in the Government Tender Bulletin, complies with the Constitutional provision that all prospective service providers should be granted the right to contend for public sector business through competitive bidding (National Treasury Department, 2007a).

According to *South Africa's Economic Transformation, A Strategy for Broad Based Black Economic Empowerment (BBBEE)*, the Preferential Procurement Act recognised that

government, as the major buyer of goods and services, had the duty to use this buying power in support of the objectives of BBBEE and the development of small enterprises. As noted in the previous chapter, Section 1 of BBBEE Act defines BBBEE as:

“the economic empowerment of all black people including women, workers, youth, people disability and people living in rural areas, through diverse but integrated socio-economic strategies...”.

The paper on *South Africa’s Economic Transformation, A Strategy for Broad Based Black Economic Empowerment* notes that the following mechanisms were introduced to give effect to a Preferential Procurement Policy:

- “The tendering process was made more accessible to black people;
- Tenders were unbundled into smaller tenders to allow smaller enterprises to tender work; and
- A point system was introduced to award tenders on the basis of the combination of preference for targeted group”.

The primary objective of the Department of Public Works’ Supply Chain Management Policy is to create an environment that enables the Department to procure goods and services and works in a manner that is fair, equitable, transparent, competitive and cost effective. The policy provides that for goods and services (non-construction work) and property management, first preference will be allocated in terms of the KwaZulu-Natal Supply Chain Management Policy Framework.

### **4.3 IMPLEMENTATION MECHANISM**

The Department of Public Works uses the following mechanisms to implement its SCM Policy:



#### **4.3.1 Bid Committees**

The Bid Committee sets, evaluates and adjudicates all bids (tenders) from specifications, adverts, awards, expansion of contract sums, and contract periods. The department uses three types of Bid Committee, namely:

- The Bid Specification Committee, whose responsibility it is to establish bid criteria and approve specifications and procurement strategy;
- The Bid Evaluation Committee, whose responsibility it is to carry out the technical and administrative evaluation of a bid offer and come up with recommendations to the Bid Adjudication Committee for award thereof; and
- The Bid Adjudication Committee whose responsibility it is to award the Bid.

The Department's SMC policy also notes that it is the responsibility of the Bid Committee to make certain that the process of soliciting and evaluating bids is fair, equitable, transparent, competitive and cost effective.

#### **4.3.2 Information Systems**

The SCM policy of the Department of Public Works requires the Department to set up information systems, which encompass the following:

##### **4.3.2.1 Provincial Suppliers' Database**

The Department ensures that all service providers utilised are registered on the Provincial Suppliers' Database created by the Provincial Treasury for all categories of procurement. To register on this database suppliers are required to fill in the ZNT 31 form, which was generated to guarantee that suppliers are considered legitimate bidders.

##### **4.3.2.2 Construction Industry Development Board Database (CIDB)**

The CIDB was created by Parliament as a legal body for the improvement of the construction industry. The *inbrief 5: reasons for contractor registration* issued by the CIDB provides that "The CIDB is required by the Construction Industry Development Board Act to establish a

register of Contractors. The register grades and categorizes contractors according to their works and financial capability. Contractors must register with CIDB in order to be awarded contracts with the public sector”. To be registered with the CIDB companies need to download forms from CIDB website and bring back the forms after filling them in to the Department’s offices. Contractors are expected to renew their registration on an annual basis.

The CIDB further states that “by profiling contractors the Register of Contractors enables employers to package projects in a way that creates the right work opportunities for target groups and enables focused contractor development programmes” (*inbrief 5: reason for contractor registration issued by CIDB*).

For all construction projects, the Department utilises contractors registered in the suitable class and grading from the CIDB database. Invitations and awards are advertised through i-tender. The Department of Public Works Operating Standard Procedures provides that CIDB prescribe four methods of evaluation as follows:

- Method 1: Financial offer (Price);
- Method 2: Financial offer (Price) and Preferences;
- Method 3: Financial offer (Price) and Functionality; and
- Method 4: Financial offer (Price) functionality and preference (SCM Policy)

The Department of Public Works Operating Standard Procedures state that for tenders the Department can select between method 2, which rests on financial (Price) and preference considerations, and method 4, which rests on financial functionality and preference. For engineering and construction works, the use of functionality in evaluation is restricted to projects of a complex nature for an example, a design and build project, where quality is of paramount importance (Department of Public Works Operating Standard Procedures, 2006).

#### **4.3.2.3 E-procurement**

E-procurement refers to the effective utilisation of technology to automate the buying and selling of goods and services. According to Van Greunen, Herselman and Van Niekerk (2010:6), “the introduction of electronic public procurement tools helps to attain a critical user

mass of electronic public procurement to facilitate economic growth, economies of scale, BBBEE and PPPFA targets”. The Department utilises e-procure software for tenders and e-procure software for quotations once e-procure is implemented in the Department.

#### **4.3.2.4 Supplier register**

The Department has created an approved list of suppliers that provides for balanced competition in the market place for submitting quotations/tenders. This register contains information about suppliers that may be used to proactively identify potentially responsive bidders in targeted interventions.

#### **4.3.2.5 Professional services register database**

The CIDB publication advises that professional services be solicited using the Professional Services Register as a cost effective option, as opposed to the use of open bid procedures for every procurement.

#### **4.3.2.6 WIMS System**

The Department has developed an information system to monitor and evaluate SCM implementation, and to provide reports on procurement spending as per the requirements of SCM Regulations.

### **4.4 TENDERING PROCEDURE AND PROCESSES USED BY THE DEPARTMENT**

The Department of Public Works Supply Chain Management Policy notes that this Ministry has adopted the prescripts of SCM Regulations to standardise procurement procedures. The policy further notes that the provincial priorities in terms of target groups are utilised as per the approved preferential procurement objectives. For construction work, all preference points are allocated in accordance with the Preferential Procurement Policy Framework Act (PPPFA) and its regulations in accordance with CIDB standards of uniformity.

#### 4.4.1 Planning and Stipulation of Preference Point System

The draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework provides that a provincial organ of state must, prior to making an invitation for bids:

- “properly plan for and as far as possible, accurately estimate the costs of the provision of goods, services and / or works for which an invitation for bids is to be made;
- determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of the bids; and
- determine the deliverables or performance indicators in terms of which a person awarded a contract will be assessed”.

In terms of principles, the draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework states that the points stipulated in respect of a bid must include preference points for equity ownership by HDIs. The regulatory policy framework further states that:

“the equity ownership must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company’s shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of a bid”.

#### 4.4.2 The 80/20 preference point system for acquisition of goods, services and/or works up to a Rand value of R 500 000

The following formula is used by the Department to calculate the points for price in respect of bids/procurement with a Rand value equal to, or above R30 000 and up to a Rand value of R500 000 (Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework). The SCM Regulatory Policy Framework provides that state organs may, however, apply this formula for procurement with a value of less than R30 000, if and when appropriate:

- A maximum of 80 points is allocated to Price only on the following basis:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Source: Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework

Where

$P_s$  = Points scored for price of bid under consideration;

$P_t$  = Rand value of bid under consideration; and

$P_{min}$  = Rand value of lowest acceptable bid.

The Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework prescribes that a maximum of 20 points be awarded to a tenderer for being an HDI and / or subcontracting with an HDI and calculated as follows:

(a) A maximum of 12 preference points are allocated to a HDI on the following basis:

- (i) HDI (Black ownership) = 6 x (% Black Equity Ownership);
- (ii) HDI (Women ownership) = 4 x (% Women Ownership); and
- (iii) HDI (Disabled ownership) = 2 x (% Disabled Ownership)

HDI = Total number of HDI equity ownership points awarded.

(b) The formula indicated above is only applicable to bidders who meet a minimum of:

- (i) HDI Black ownership > 50% Black equity ownership;
- (ii) HDI Women ownership > 30% Women equity ownership; and
- (iii) HDI Disabled ownership > 10% Disabled equity ownership.

(c) The principle referred to above in goal b (i) applies to all HDI preference calculations for 80/20.

Where the bidder is a consortium or joint venture the percentage HDI equity ownership is calculated in relation to the relative value of a bid that will be executed by the HDI component of the consortium or joint venture (Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework). The Regulatory Policy also provides that a maximum of 8 preference points be allocated to the selected specific goal(s) stipulated in Section 20 in line with the objectives of the Department or public entity and only the bid with the highest number of points scored may be selected.

#### 4.4.3 The 90/10 preference point system for acquisition of goods, services and / or works with a Rand value above R500 000

The KwaZulu-Natal Supply Chain Management Regulatory Policy Framework provides that the following formula be utilised to work out the points for price in respect of bids/procurement with a Rand value above R500 000:

A maximum of 90 points is allocated to Price only on the following basis:

$$P_s = 90 \left( \frac{1 - P_t - P_{\min}}{P_{\min}} \right)$$

Source: Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework

Where

$P_s$  = Points for comparative price bid under consideration;

$P_t$  = Comparative price of bid under consideration; and

$P_{\min}$  = Comparative price of lowest acceptable bid.

A maximum of 10 points may be awarded to a bidder for being an HDI and/or subcontracting to an HDI and achieving any of the specific goals stipulated in section 20 of the Regulatory Framework, calculated as follows:

(a) A maximum of 6 preference points may be allocated for Contract Participation Goal on the following basis:

$$N = 6 (D - D_s) / (X - D_s)$$

Where

$N$  = Points scored for achieving contract participation goal/s

$D$  = Tendered Participation Goal

$D_s$  = Minimum Participation Goal set by employer (25%)

$X$  = Participation Goal above which no further points are awarded (60%)

(b) A contractor may achieve his/her Contract Participation Goal obligations as follows:

- by virtue of HDI status as a Prime Contractor;

- by virtue of being a joint venture/consortium with an HDI as a Prime Contractor;
- by awarding/subcontracting to HDIs; or
- by awarding/subcontracting to joint ventures, which have HDI partners.

(c) A maximum of 4 preference points shall be allocated (or split) to the selected specific goal(s) stipulated in Section 20 in line with the objectives of the Department or public entity.

The Draft KwaZulu-Natal Supply Chain Management Regulatory Policy Framework elaborates that the points scored by a bidder must be added to the points scored for price and only the bid with the highest number of points scored may be selected. Preferential procurement is a useful tool to promote BEE. It applies the 80/20 and 90/10 points system to promote the objectives of BEE, where 80 points are points allocated for the price, starting from less than R30 000 up to R500 000 and 20 points is allocated to the bidder for being an HDI or contracting to an HDI. On the other hand, 90 points are allocated for the price only from R500 000 and above and 10 points allocated to the bidder for being an HDI or subcontracting to an HDI.

#### **4.4.4 Evaluation of the bid based on functionality**

The SCM Regulatory Policy Framework proclaims that the Department should invite and evaluate bids on the basis of functionality, depending on the nature of the required commodity, service and/or works. The regulatory policy also provides that when functionality is utilised as an evaluation criterion, the following must be considered:

- When inviting bids the Department must indicate in the bid document:
  - (a) whether the bids will be evaluated on functionality;
  - (b) the evaluation criteria for measuring functionality;
  - (c) the weight of each criterion; and
  - (d) the applicable value, as well as the minimum threshold for functionality.

- The evaluation of the bids must be conducted in the following two stages:
  - (a) Firstly, the assessment of functionality must be done in terms of the evaluation criteria and the minimum threshold referred to above. A bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation; and
  - (b) Thereafter, only the qualifying bids are evaluated in terms of the 80/20 or 90/10 preference points systems, where the 80 or 90 points must be used for price only and the 20 or 10 points are used for HDI ownership and/or for achieving the prescribed RDP goals.

The KZN SCM Regulatory Policy Framework also states that the total points allowed for price may, in respect of bids with an estimated Rand value equal to, or below R500 000, not exceed 80 points and for those with an estimated value equal to or above R500 000, not exceed 90 points. The conditions of a bid stipulate that a bidder must meet the evaluation criteria to qualify for further evaluation and adjudication (KZN SCM Regulatory Policy Framework). Preferences for being an HDI and/or subcontracting to an HDI and/or achieving specified goals are calculated separately and are added to the points scored for price and only the bidder with the highest number of points may be selected (KZN SCM Regulatory Policy Framework).

#### **4.4.5 Award of contract scoring the highest number of points**

The Regulatory Framework declares that a contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points in terms of PPPFA Regulations.

#### **4.4.6 Cancellation and re-invitation of bids**

The KZN SCM Regulatory Framework provides that there should be cancellation and re-invitation of the bid in the event of the following:

- In the event that, in the application of the 80/20 preference point system as stipulated in the bid documents, all bids received exceed the estimated Rand value of R500 000.



- In the event that, in the application of the 90/10 preference point system as stipulated in the bid documents, all bids received are equal to, or below R500 000, the bids must be cancelled.
- An organ of state may, prior to the award of a bid, cancel a bid if:
  - (a) Due to changed circumstances, there is no longer a need for the goods or services bid for; or
  - (b) Funds are no longer available to cover the total envisaged expenditure;
  - (c) No acceptable bids are received;
  - (d) There are significant errors in the bid invitation documents;
  - (e) The bid price is certified as being exorbitant; or
  - (f) The bids were not advertised in the Government Tender Bulletin.

The KZN SCM Regulatory Framework declares that any reason other than the above may be accepted as justifiable grounds with the approval of the Provincial Treasury.

#### **4.4.7 Tax clearance certificate**

No contract may be awarded to an enterprise that has failed to submit an original valid Tax Clearance Certificate from the South African Revenue Service (SARS) certifying that their taxes are in order or that arrangements have been made with SARS (KZN SCM Regulatory Policy Framework).

#### **4.4.8 Specific goals**

The following are amongst the specific goals of Broad Based Black Economic Empowerment as outlined in the Draft KwaZulu-Natal Supply Chain Management Policy Framework:

- In the awarding of preference points in support of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP:
  - “The promotion of South African owned enterprises and products;
  - The promotion of SMMEs;
  - The creation of new jobs or the intensification of labour absorption;
  - The promotion of enterprises located in the KZN Province for work to be done or services to be rendered in KZN Province;

- The empowerment of the work force by standardising the level of skill and knowledge of workers;
  - A company with a youth ownership of 25% or more; and
  - A black co-operative with 100% black ownership” (Draft KwaZulu-Natal Supply Chain Management Policy Framework).
- Specific goals must be quantifiable and organs of state must monitor the implementation of the contract for compliance with such goals.

All KwaZulu-Natal provincial state organs need to guarantee that their preferential procurement goals are in line with provincial goals as defined in the KZN Provincial Government’s Economic Development Strategy and the BEE Strategy (Draft KZN SCM Regulatory Policy Framework).

#### **4.4.9 Promoting SMMEs and Co-operatives**

In promoting the SMMEs and co-operatives, the draft KwaZulu-Natal SCM Policy Framework provides that:

- “The department may where SMMEs and co-operatives are concerned, pay them within fourteen days of receipt of invoice, in order to facilitate execution of contractual obligations;
- The department may decide the guarantees and sureties required in respect of all contracts, based on their judgment of capacity of the SMME and cooperative contractor to perform the contract; and
- The Provincial Supply Chain Management Unit must identify projects, as part of the procurement process, which will be targeted to advance SMMEs and co-operatives. The projects must make up at least 20% of the overall procurement budget of the province”.

### **4.5 TARGETED GROUPS**

According to the KwaZulu-Natal Provincial Treasury’s, Preferential Procurement System, it is essential to guarantee that the enterprises are continuing and independent enterprises which are working for profit and are providing a commercially useful function and:

- are owned by one or more HDIs; and
- whose management and daily business operations are in the control of one or more HDIs who effectively own it.

The targeted groups listed have to meet the following criteria to be considered in terms of the direct preference point system or the contract participation goal (KwaZulu-Natal Provincial Treasury, Preferential Procurement System).

#### **4.5.1 Black Equity Ownership**

The Equity ownership must allow a minimum of 40%. Should the business have a 40% minimum equity ownership, it will instantly earn 7.5 points. This will be done in meeting of the objectives of BEE.

#### **4.5.2 Women Equity Ownership**

A minimum of 25% equity ownership will qualify the business for the prescribed preference points. The granting thereof will be on a pro-rata basis namely: 100% ownership will earn 2.5 points.

#### **4.5.3 Youth**

A minimum of 25% equity ownership will meet the criteria for an entity for the prescribed preference points. The granting thereof will be on a pro-rata basis namely 100% ownership will earn 2.5 points.

#### **4.5.4 Disabled Persons Equity Ownership**

A minimum of 25% equity ownership will meet the criteria for entity of the prescribed preference points. The granting thereof will be on a pro-rata basis namely 100% ownership will earn 2.5 points.

#### 4.5.5 Priority Population Group (PPG)

All those entities which have a 100% PPG equity ownership will meet the criteria for 2.5 points. Any percentage of equity less than a 100% will not be granted any points.

#### 4.5.6 Co-operatives

For a business to qualify as a co-operative, it has to be formally constituted as a co-operative. Entities which satisfy the afore mentioned criteria will earn an additional 2.5 points only in the event that such entities demonstrate a minimum of 100% equity ownership by Black people.

The table below shows the allocation of direct preference points to the targeted groups:

Table 4.1 Allocation of direct preference points to the targeted groups preference system

<b>ALLOCATION OF DIRECT PREFERENCE POINTS TO THE TARGETED GROUPS PREFERENCE POINT SYSTEM</b>		<b>80/20</b>
<b>PRICE</b> (including Capacity, Specific Resource Requirements, Qualitative Requirements and Functionality		80
<b>DIRECT PREFERENCE POINTS</b>	Black	7.5
	Women	2.5
	Disabled persons	2.5
	Priority population group	2.5
	Co-operatives	2.5
	Youth	2.5
<b>Total points for development objectives</b>		20
<b>Total adjudication points</b>		100

Source: KwaZulu-Natal Provincial Treasury, Preferential Procurement System Practice Note Number: SCM-06 of 2006

The Standard Operating Procedures provide that preference goals must be selected and maximum points must allocated to each goal totalling to 20 or 10 depending on their

preferential point system used. The Standard Operating Procedures of the Department further state that these points must be changed to a percentage for inclusion in the tender documents. Care must be taken to ensure that the goals chosen are in line with the targets provided in the procurement plan of the department unless the project is unplanned for (Standard Operating Procedures). Lastly, the Standard Operating Procedures note that if the projects are unplanned for, the Preferential Procurement Objectives (PPOs) of the relevant department must be utilised to develop targets. The goals to be selected from are:

- HDI (women) equity ownership;
- HDI (disabled) person equity ownership;
- HDI (youth) equity ownership;
- HDI (PPG namely: African) equity ownership (PPG – Priority Population Group);
- HDI (Coloured and/or Indian) equity ownership.

It is important to note that for the entity or enterprise to qualify as a targeted group it must be legally registered and comply with South African Revenue Services regulations.

## **4.6 CONCLUSION**

This chapter has outlined the procedures and processes of preferential procurement as a useful tool for BEE in the Department of Public Works in KZN province. It has detailed an elaborate scorecard process, which the Department utilises in applying BEE principles in its procurement processes. It is critical that the Department adheres to the above-mentioned processes, since they promote the principles of Broad-based Black Economic Empowerment. The processes and procedures are specifically designed to promote the participation of Black-owned enterprises; enterprises owned by HDIs and enterprises owned by Black women.

# **CHAPTER 5: RESEARCH METHODOLOGY**

## **5.1 INTRODUCTION**

Chapter 1 of this dissertation provided the introduction and background to the topic and discussed the concept of BEE within the context of public administration. Further, a literature review was undertaken for the purposes of understanding the theory and the research area more comprehensively. In addition, the operational framework used by the Ministry in practice to meet the developmental obligations set out in the BEE and legislative frameworks was highlighted. In this chapter, the research methodology used to achieve the objectives of this study will be discussed. In particular, this chapter outlines the scope of the study, the research design adopted, the target population sampled and how the questionnaires were administered for data collection. Further, the chapter lays out the measuring instrument utilised and the data analysis. First, however, a reiteration of the research objectives is necessary.

## **5.2 OBJECTIVES OF THE STUDY**

It is deemed appropriate at this point, to reiterate the objectives of the study, which are as follows:

### **Objective 1**

To determine the impact of BEE in tendering processes and procedures within the Ministry of Public Works.

### **Objective 2**

To examine and analyse the tendering processes used by the Ministry when procuring goods and services.

### **Objective 3**

To furnish conclusions and make recommendations aimed at improving BEE practices in tendering policies and procedures in the Ministry of Public Works.

### **5.3 SCOPE OF THE EMPIRICAL STUDY**

The empirical study was limited to one region, namely, the eThekweni region, due to time, logistical and budgetary constraints. The study focused only on the Procurement Department. The administration of the questionnaire commenced at the beginning of September 2011 and the cut-off date for the return of all the questionnaires was one month. Permission was sought from the management of the Public Works Department to conduct the study. (See Appendix5)

### **5.4 RESEARCH DESIGN**

The research design, according to Blumberg, Cooper and Schindler (2011: 57) is the blueprint for fulfilling objectives and answering questions. This research constitutes a quantitative, descriptive, cross-sectional study, which examines the views of staff members involved in procurement in the Ministry of Public Works, KwaZulu-Natal province as well as contractors to the Ministry. This quantitative study, consistent with the quantitative paradigm, is an inquiry into a social or human problem, based on testing theory composed of variables, measured in numbers, and analysed with statistical procedures, in order to determine whether the predictive generalisations of the theory hold true (Babbie & Mouton, 2002:646).

Being descriptive in nature, the study evaluates the current situation with regard to staff and contractor perceptions of BEE and its impact on tendering processes within the Ministry of Public Works. Sekaran and Bougie (2010, 105) regard descriptive research as research undertaken in order to ascertain and to describe the characteristics of the variables of interest in a situation.

The respondents were considered at a fixed point in time, namely: all data were collected at the same time (Bless, Higson-Smith & Kagee, 2006:74), hence facilitating the relative ease of data collection. Being a cross-sectional study, the variables were analysed at approximately the same time (Welman, Kruger & Mitchell, 2007: 95), in this instance a snapshot of BEE and the tendering processes at a particular point in time.

Information for this study has been solicited from both primary and secondary sources. Information has been obtained through relevant legislation, textbooks, journals, departmental

policies and reports. This is an empirical study because data have been obtained from participants through the administration of questionnaires.

## **5.5 TARGET POPULATION**

A population, according to Wegner (2002:169), consists of all the possible observations of the variables under study and inferences can be made from these observations. In this study, the population comprised two groups, namely officials/staff members involved in procurement in the Ministry of Public Works and service providers (contractors). There are 14 staff members working directly with the procurement of goods and services at the Department of Public Works, Mayville office in Durban. A list of registered contractors was provided by the branch, which contained 35 service providers. Due to the study being constrained by relatively small population sizes in respect of the two groups, a census was considered appropriate. Whereas a survey is conducted on samples, a census involves the inclusion of every member of the population (Welman *et al.*, 2007:101).

## **5.6 DATA COLLECTION**

The various techniques that can be used to collect data include observation, and the use of questionnaires, interviews and more sophisticated instruments. For the purpose of this study, the use of questionnaires was considered most appropriate. Both open (unstructured) questions as well as closed (structured) questions were posed. Questionnaires, according to Bless *et al* (2006:114) can be employed, not only to explore or describe a particular situation, but also to assess a correlation between two variables.

### **Questionnaire design**

Considering the existence of two population types, two questionnaires were developed, *viz.* a questionnaire for staff members and a questionnaire for service providers. Content of the questionnaire was informed by the literature review and designed around the objectives of the study. The sample questionnaires are included as Appendix 1 and 2. Both questionnaires are divided into sections as follows:



### **5.6.1 Questionnaire for staff members**

This questionnaire has been divided into the following sections:

#### **Section A: General knowledge**

This section attempts to ascertain respondents' general understanding of BEE, and the intended outcomes and objectives of BEE.

#### **Section B: Policies**

Respondents' knowledge with regard to the existence of, the review process pertaining to, and public accessibility to policies pertaining to BEE, Preferential Procurement and Corporate Social Responsibility is probed.

#### **Section C: Indirect empowerment**

This section aims to determine total procurement spend in the past 12 months, the proportion spent *via* Black owned enterprises, the amount spent with BEE enterprises, committed expenditure on long term contracts and expenditure *via* Black women-owned enterprises.

#### **Section D: Contractors**

This section ascertains whether the Ministry has a standardised procedure for selecting contractors and assessing tenders, how the processes in place support BEE, handling tenders by BEE companies, the degree of satisfaction with BEE initiatives thus far and the challenges faced by the Ministry in delivering on its BEE mandate.

#### **Section E: Compliance**

The opinions of respondents are solicited in respect of the following: procedures followed by the Ministry when awarding tenders, compliance with legislative requirements, receiving a

directive regarding non-compliance with legislation, measures to ensure that HDIs receive preference, consequences of non-compliance and major obstacles encountered when implementing BEE policies.

#### **Section F: Anti-corruption measures**

The measures in place to deal with corruption are examined.

#### **Section G: Important issues**

Respondents are given an opportunity to address issues that they consider relevant, but were not raised in the questionnaire.

### **5.6.2 Questionnaire for service providers**

This questionnaire has been divided into the following sections:

#### **Section A: Company profile**

The following details are ascertained: classification of organisation; period of time in operation; number of employees; gender composition of employees; education levels of employees; and whether the organisation has a board of directors.

#### **Section B: Procurement procedures and processes**

This section addresses the following: where information is obtained about invitations to tender with Public Works; whether the Ministry holds tender briefings with interested parties, and if so, how such briefings are held, and where these are held; whether information pertaining to tenders is disseminated in all the official languages; the impact of language on success in securing tenders; the time taken by the Ministry to announce successful bidders,

whether unsuccessful bidders are given an explanation for their bids not being successful; and whether the selection process gives preference to SMMEs owned by Black people.

### **Section C: Challenges and prospects**

Respondents are expected to indicate the following: major constraints in procurement processes whether payment is expected in response to a tender invitation, and if so, the amount of money involved; other major constraints in bidding successfully for a tender; whether the Ministry provides support mechanisms for tendering parties; the type of support provided; the provision of training pertaining to bidding; knowledge of the Preferential Procurement Policy Framework Act; whether the Ministry adheres to BEE prescriptions in respect of procurement; the potential for success under the various bidding arrangements; and how the Ministry can create an enabling environment for successful bidding by BEE companies.

### **Section D: Black Economic Empowerment in procurement**

The following areas, from the respondents' perspective are covered: respondents' knowledge of BEE; whether the company is classified as previously disadvantaged; ministerial compliance with legislation pertaining to BEE; the effect of a scorecard on the success of a tender; length of time taken for payment for work undertaken; the existence of equity evaluation mechanisms for tendering companies; corruption within the Ministry's Procurement Division; the impact of BEE on tendering processes and procedures; and support mechanisms for SMMEs.

### **Section E: Important issues**

Respondents are given an opportunity to address that issues that they consider relevant, but were not raised in the questionnaire.

### **5.6.3 The covering letter**

For ethical reasons, as well as to encourage higher response rates, a covering letter serves a useful purpose. With this in mind, a covering letter, addressed to the respondents, highlighted the following aspects:

- University letterhead to lend credibility to the study;
- Identity of the researcher;
- Research topic;
- Purpose of the research and intended academic qualification;
- Expected duration for completion of the questionnaire;
- Brief instruction to respondent of what is required;
- Assurance of confidentiality;
- Benefit (value) of the study;
- Contact details;
- Thanking the respondent.

These are included as Appendix 3 and the Ethical Clearance as Appendix 4

### **5.6.4 Validation of the measuring instruments**

According to Goddard and Melville (2005:47), it is easy to compile a questionnaire, but not easy to compile an effective one. To address this issue, the questionnaires were scrutinised by the research supervisor, a practitioner in the area of public management, and a statistician. All three suggested minor changes. The instrument was then pre-tested with one potential staff respondent and one potential service provider respondent with a view to identifying flaws such as, vague questions, ambiguity, and confusing questions. Once again, minor issues were raised. This exercise was undertaken in order to address the face validity of the measuring instrument. Face validity is concerned with the way in which the instrument appears to the participant (Bless, Higson-Smith and Kagee, 2006:160) or the extent to which a measurement instrument measures what it purports to measure (Struwig and Stead, 2001:139).

## **5.7 QUESTIONNAIRE ADMINISTRATION**

Using the contractor database as a source of names and addresses, the questionnaire was personally delivered to service providers *via* the office of the Ministry of Public Works. All respondents were contacted prior to this exercise, informing them of the study and making an appeal for co-operation. The questionnaire for staff members was also personally delivered by the researcher to the Mayville office. Respondents were afforded a period of one month to complete and return the questionnaire to the office of the Ministry of Public Works, from which the researcher collected the completed questionnaires.

## **5.8 DATA ANALYSIS**

In this study, the collected data was analysed using a computerised statistical program, SPSS, Version 15. The final results will, therefore, be presented using *inter alia*, frequency tables, contingency tables, graphs and thematic reporting.

## **5.9 CONCLUSION**

This chapter has discussed the research methodology adopted for the study. The scope of the study was clarified. The research design is quantitative, descriptive and cross-sectional in nature. The target population comprised two groups of respondents, namely: employees involved in procurement at and contractors to the Ministry of Public Works in KZN. To this end, two questionnaires were developed, aimed at the two groups of respondents. Questionnaires were distributed to respondents *via* the Public Works offices in Durban. Efforts to address the validity of the questionnaires have been explained.

The next chapter presents the findings of the study.

## **CHAPTER 6: ANALYSIS OF FINDINGS**

### **6.1 INTRODUCTION**

This chapter presents the findings of the study as sourced from respondents using a questionnaire. The data collected was analysed using a computerised statistical program, SPSS, Version 15. The aim was to determine the consistency of the responses for questions in the construct. The final findings are presented in the form of tables, pie charts, various versions of vertical and horizontal bar graphs and percentage distributions.

### **6.2 STATEMENT AND HIGHLIGHTS OF RESULTS**

The population, in the case of this study, comprised two groups, namely officials/staff members involved in procurement in the Ministry of Public Works, and service providers (contractors). As a result, two different questionnaires were constructed for the population, consisting of different sections, which will be analysed separately. Out of the 14 staff members in the Department of Public Works, 8 responded, and out of the 35 service providers, there were 30 respondents.

#### **CONTRACTORS**

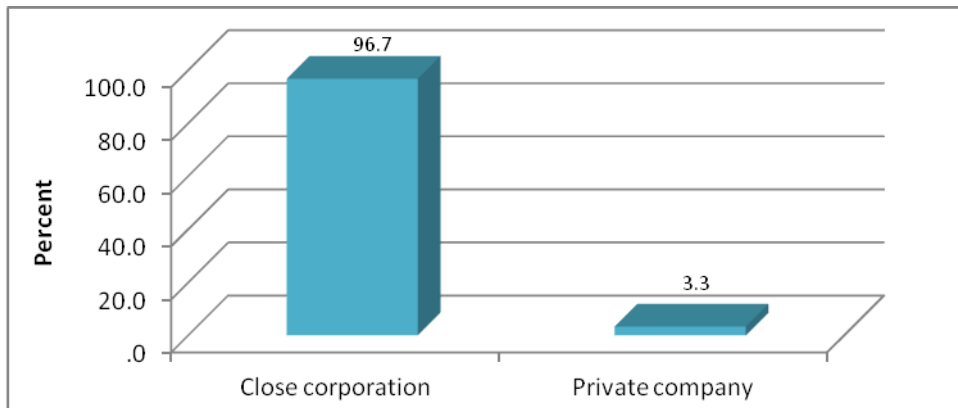
##### **SECTION A: DETAILS OF THE COMPANY**

This section provides an analysis of the demographic and biographical details of the respondents.

##### **6.2.1 Company Profile**

Figure 6.1 below represents the categories into which the respondents' companies fall.

Figure 6.1: Company classification

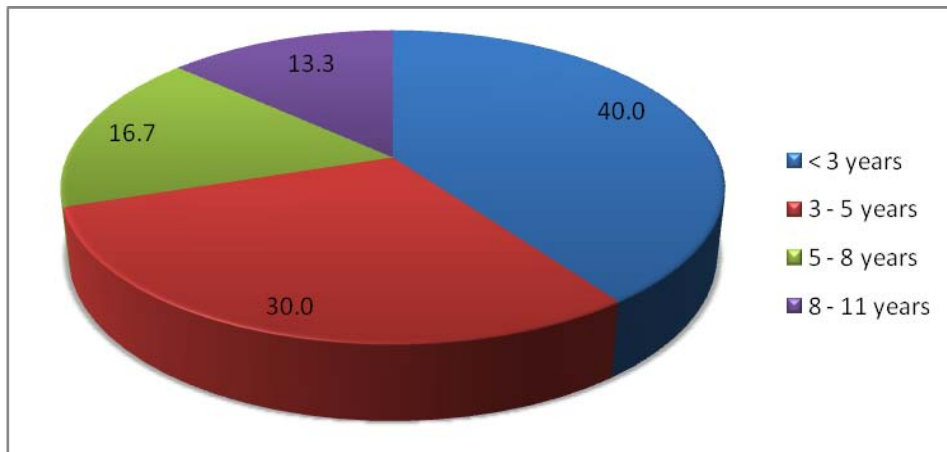


It is noted that most participants (96.6%) were owners of close corporations.

### 6.2.2 Period of time in operation

Figure 6.2: Company Duration

The period of time the companies have been in existence is shown in the Figure 6.2.



Seventy per cent of the companies have been in existence for less than 5 years. A similar percentage of companies (mean = 15%) have been in existence for between 5 – 8 years and between 8 – 11 years. This indicates that the study is dominated by new companies.

### 6.2.3 Duration and classification of the company

The number of people employed by the companies is given in the cross-tabulation Table 6.1.

Table 6.1 Number of people employed

Company Classification				How long has the business been operational				Total
				< 3 years	3 - 5 years	5 - 8 years	8 - 11 years	
Close corporation	Number of people employed	< 3	Count % of Total	3 10.34%	1 3.45%	1 3.45%	0 0.00%	5 17.24%
		3 - 5	Count % of Total	3 10.34%	2 6.90%	0 0.00%	0 0.00%	5 17.24%
		5 - 8	Count % of Total	4 13.79%	4 13.79%	0 0.00%	3 10.34%	11 37.93%
		8 - 11	Count % of Total	0 0.00%	2 6.90%	4 13.79%	1 3.45%	7 24.14%
		> 11	Count % of Total	1 3.45%	0 0.00%	0 0.00%	0 0.00%	1 3.45%
	Total		Count % of Total	11 37.93%	9 31.03%	5 17.24%	4 13.79%	29 100.00%
Private company	Number of people employed	< 3	Count % of Total	1 100.00%				1 100.00%
		Total	Count % of Total	1 100.00%				1 100.00%

There was a single employee for the private company, which had been in existence for less than 3 years. It is noted that there is a decreasing pattern in the number of years of existence for closed corporations. The number of people employed is normally distributed with the modal value occurring in the 5 – 8 categories for the number of people employed. Companies



that had been in existence for 8 – 11 years employed between 5 and 11 people who comprised 14% of the number of people employed.

#### 6.2.4 Gender Composition

The average number of employees by gender is shown in the Table 6.2 below.

Table 6.2: Gender composition

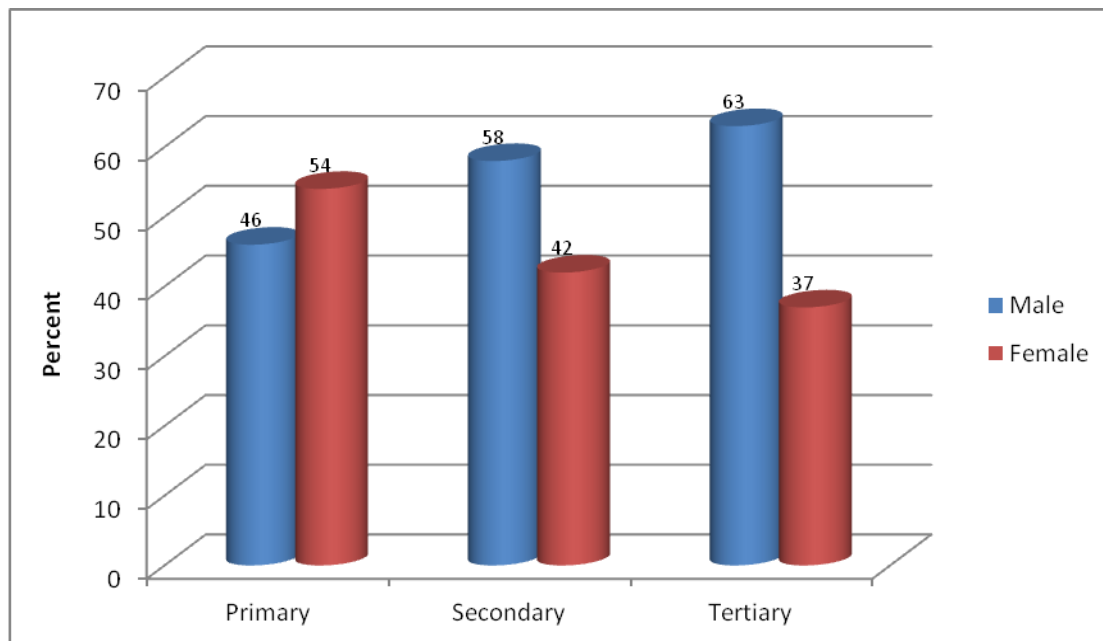
		Female	Male
N	Valid	28	29
	Missing	2	1
Mean		5.64	7.72
Std. Deviation		5.438	5.490

Slightly more males than females were employed on average. The error term was similar for both genders.

#### 6.2.5 Educational levels

Analysis of the employees by educational qualification highlighted the following is shown in the Figure 6.3.

Figure 6.3: Educational levels

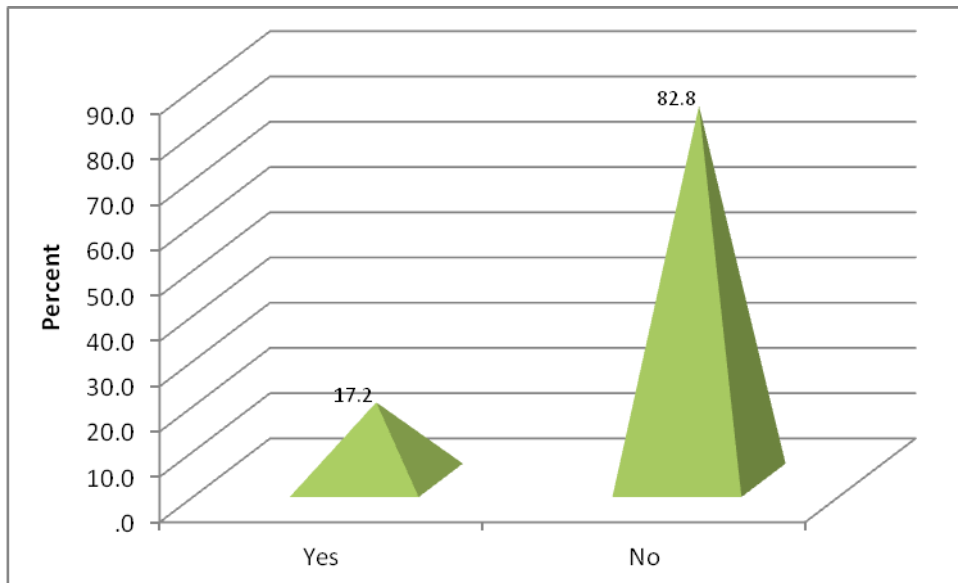


At the lowest end of the qualification spectrum, it is observed that there are more female (54%) than male (46%) employees. At secondary and tertiary levels, it is noted that there are more males employed than females. The implication of this in terms of job done is that females are doing less skilled work because of their lower qualifications. Males are more on the management side.

#### 6.2.6 Board of directors

Figure 6.4 indicates the percentage of companies that have a board of directors.

Figure 6.4: Board of directors



Only 17.2% of the companies had a board of directors and 82.8% does not have board of directors, but own a closed corporation, which is a business owned by a small number of people whose responsibility is to manage day-to-day operations.

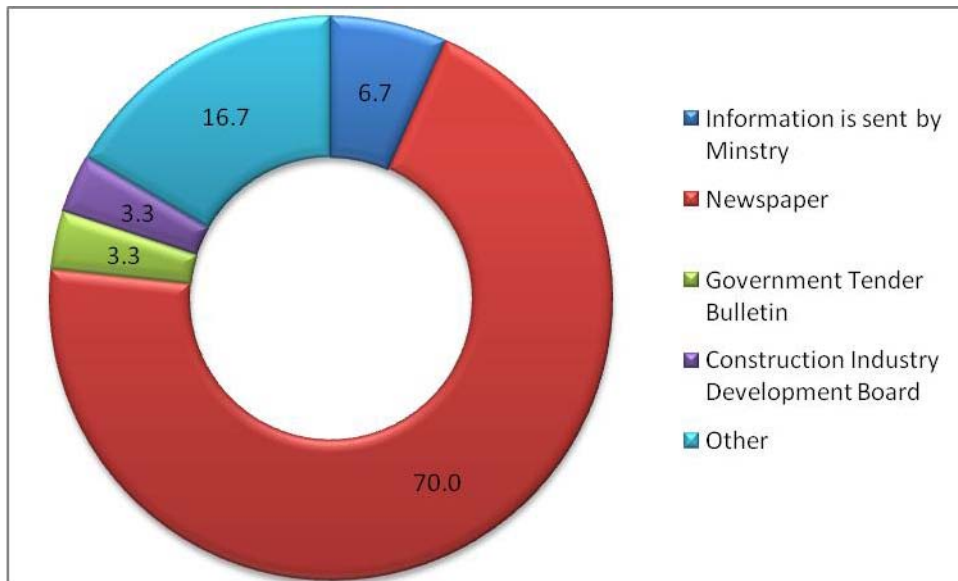
### SECTION B: PROCUREMENT PROCEDURES AND PROCESSES

This section analyses the procurement procedures and processes within the official structures.

#### 6.2.7 Invitation to tender

Where do you get information about the invitations to tender with Public Works?

Figure 6.5 Information about invitation to tender



According to Figure 6.5, a little less than three-quarters of the respondents (70%) indicated that their primary source of information was the newspaper. Only (6.7%) of the respondents stated that they obtained information through the Ministry, while (3.3%) indicated that they obtained information from the Government Tender Bulletin. The remaining companies (3.3%) obtained invitations to tender from Construction Industry Development Board (CIDB).

### 6.2.8 Tender briefing

Table 6.3 summarises the tender briefing processes instituted by the Ministry.

Table 6.3 Summary of tender briefing

Does the Ministry hold tender briefings with interested tenderers?				Where the briefings take place?		Total
				Project Site	Other	
Yes	If yes, how are such briefings organised?	Workshop	Count	1	-	1
			% of Total	3.8	-	3.8
		Presentation	Count	25	-	25
			% of Total	96.2	-	96.2
	Total	Count	26	-	26	
		% of Total	100	-	100	

Of the 30 respondents, 26 answered in the affirmative on whether the Ministry hold tender briefings with the interested tenderers. All of the respondents indicated that the briefing processes are held on site, with all but one indicating that the briefings were conducted using effective presentation techniques.

### 6.2.9 Use of language

The use of language in the tender process and its impact was determined and is summarised in Table 6.4

Table 6.4: Use of language.

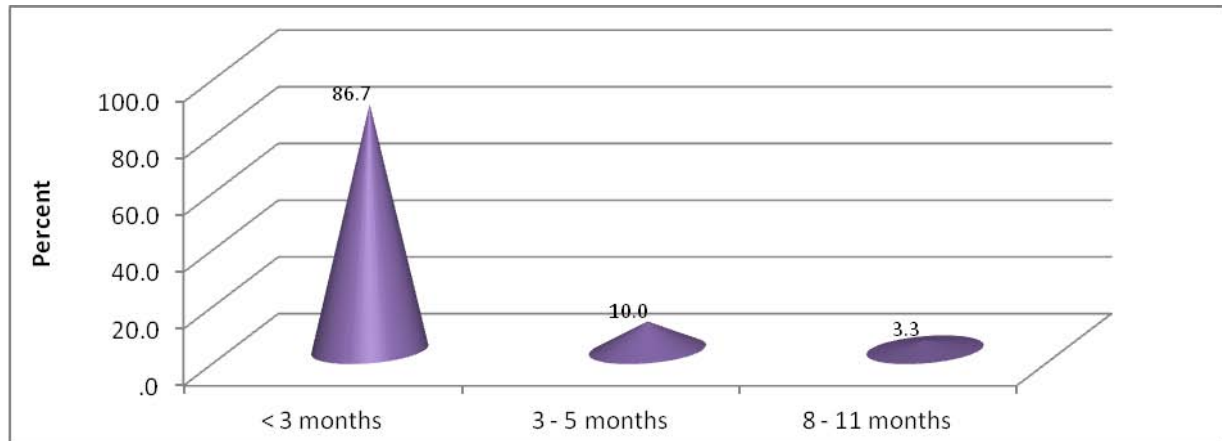
			Does the Ministry provide tender information in all official languages?		Total
			Yes	No	
Would you say the language used to provide tender information has an impact on your success as prospective services providers?	Strongly agree	Count	0	15	15
		% of Total	.0%	50.0%	50.0%
	Agree	Count	4	4	8
		% of Total	13.3%	13.3%	26.7%
	Moderate	Count	0	1	1
		% of Total	.0%	3.3%	3.3%
	Strongly disagree	Count	1	5	6
		% of Total	3.3%	16.7%	20.0%
Total		Count	5	25	30
		% of Total	16.7%	83.3%	100.0%

Most of the respondents (83.3%) said that the Ministry does not publish information in all official languages. More than 75% of the respondents believe that the language used in the tender process does have an impact on their success as prospective service providers. In most cases, the level of education of contractors is minimal and they normally appoint a qualified foreman to run the entire project on site, but language remains a barrier in filling in a tender document.

### 6.2.10 Notification of results

How long does it take the Ministry to announce successful tenderers, based on your experience?

Figure 6.6: Notification of results



As Figure 6.6 indicates the majority of the respondents agreed that the Ministry announces the results of tenders within 3 months. Only 10% of the respondents stated that notification takes 3-5 months while 3.3% said they are notified within between 8 and 11 months.

### 6.2.12 Notification of unsuccessful tenderers

Are unsuccessful but short-listed tenderers provided with information as to why their bid to provide service failed?

Table 6.5: Notification of unsuccessful tenderers

	Frequency	Percent
Yes	1	3.3
No	29	96.7
Total	30	100.0

The overwhelming majority of the respondents agree that the Ministry does not give reasons as to why a tender was not successful as shown in Table 6.5. This clearly indicates that the Ministry has violated the provisions of the number of pieces of legislation. Section 32(1) of the Constitution states that “everyone has the right of access to

(a) any information held by the state; and

(b) any information held by another person that is required for the exercise or protection of any rights.”

Section 33(2) states that “everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.” The main objective of the Promotion of Access to Information Act (PAIA) was to get rid of the “secretive and unresponsive culture” that dominated the public and private sector prior to democracy, which resulted in the misuse of power and human rights violations. The PAIA plays a major role in assuring the rights of unsuccessful bidders in accessing tender documents.

### **6.2.13 Small Micro Medium Enterprises (SMMEs) Preferences**

Does the selection process of the Ministry give first preference to SMMEs owned by Blacks?

Table 6.6: Small Micro Medium Enterprises preferences

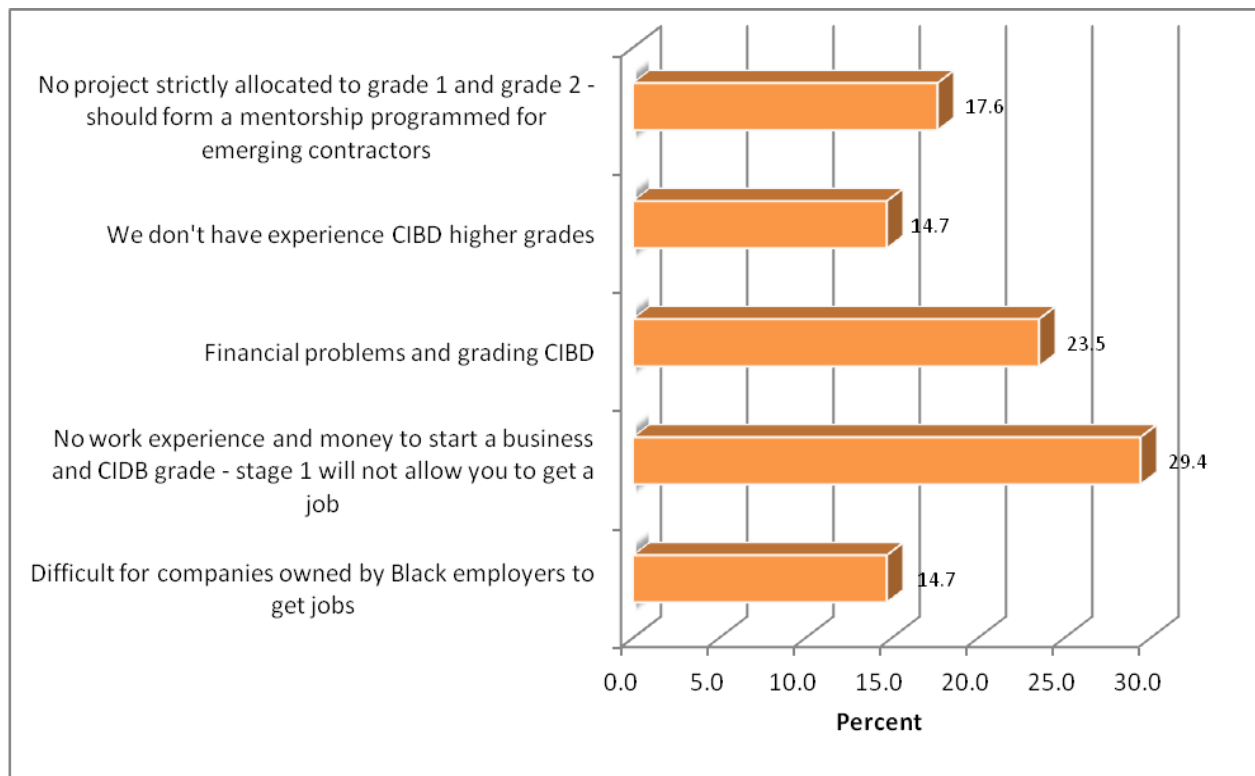
	Frequency	Percent
Yes	12	40.0
No	18	60.0
Total	30	100.0

There is a 2:3 ratio of agreement to disagreement in terms of preferences being given to Black owned companies (Refer to Table 6.6). This contradict criteria for the preferential procurement score set out in Code 500 (Codes for Better BEE) which provides, that small companies must be treated in a different way from large corporations and given much more scope to optimise their scores.

### **6.2.14 Reason for no response to preceding question**

Some of the main reasons provided for a “no” response to the previous question are listed in Figure 6.7.

Figure 6.7: Reason for no response to preceding question



About 17.6% of the respondents said that first preference is not given to SMMEs because there are no projects strictly allocated to grade 1 and grade 2 and suggested that the Ministry provide mentorship programmes for emerging contractors. Surprisingly, 14.7% stated that they are not given preference due to the fact that they do not have enough experience and that the Ministry advertised projects which require people with higher CIDB grades. Roughly 23.5% of respondents mentioned that SMMEs are having financial and CIDB grades problems, hence they are not given first preference. About 29.4% of the respondents are of the opinion that preference is not given to SMMEs because they do not have money to start up their business and their current CIDB grade 1 does not allow them to get any projects.

While the objectives of BEE encourage HDIs to be given first priority, 14.7% of respondents indicated that Black companies are having difficulty being awarded contracts by the Ministry. This is ironic, as preferential procurement was developed as a tool to achieve the objectives of Black Economic Empowerment. This result suggests that the Ministry is acting against the provisions of BEE, giving credence to the argument that although political freedom is a reality, economically, wealth and power remain in the hands of a few. It is important to note that the primary objectives of preferential procurement are to provide Black companies with

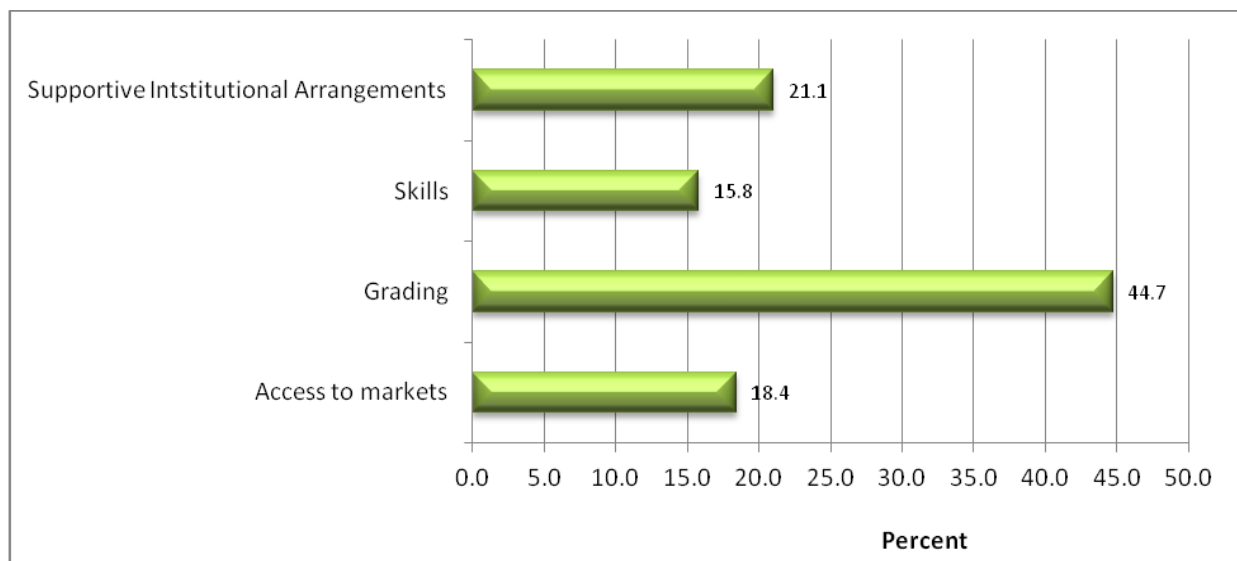
an advantage in accessing contracts from the public and private sectors that were disallowed during the apartheid era.

## Section C: CHALLENGES AND PROSPECTS

### 6.2.15 Major constraints

Which of the following are your major constraints in procurement processes?

Figure 6.8: Major constraints in procurement process



On a comparative scale, CIDB grading seems to be the biggest hurdle. The remaining factors have (approximately) only a 5% variation; hence, the scores are close to one another. The respondents complained bitterly of the negative effects of CIDB grading. Amongst other things, the CIDB was created to register grades and classify companies according to their works and financial capability so as to ensure that projects are completed successfully, thus minimising project failure. While this may be the case, the above results create the impression that the CIDB is setting SMMEs up for failure. Classification of contractors according to grades is seen to be a stumbling block to the upliftment of the small companies. This is contrary to the provisions of BEE and preferential procurement, which encourage a contribution towards enterprise development.



### 6.2.16 Buying of tender documents

Table 6.7a: Buying of tender documents

		Frequency	Percent
Valid	Yes	1	3.7
	No	26	96.3
	Total	27	100.0

### If yes, how much do you pay?

Table 6.7b: Positive response to the preceding question

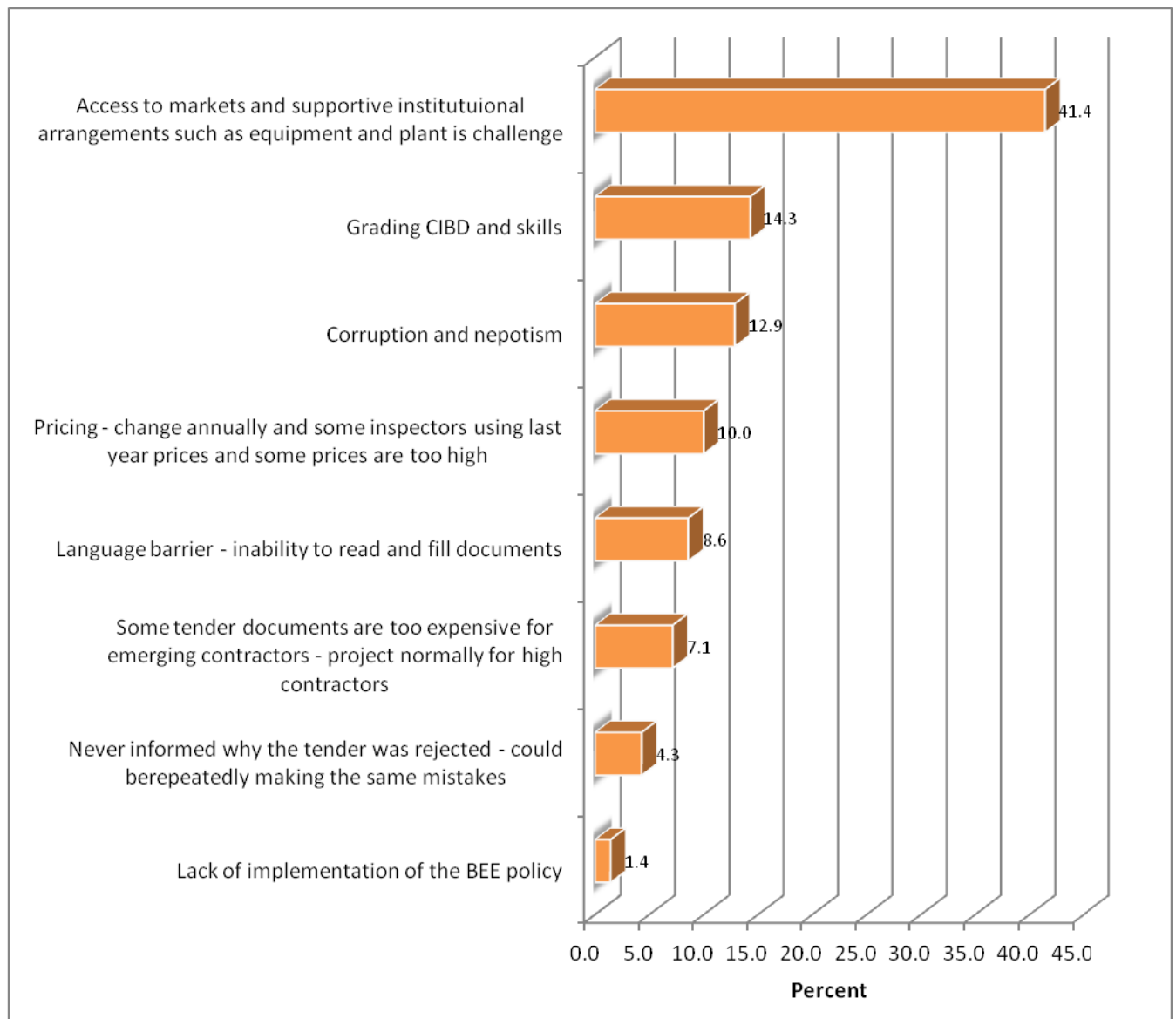
		Frequency	Percent
Valid	R 450 - R 650	1	100.0

Only one respondent reported having to pay fees (Table 6.7a), and indicated that the amount paid was between R450 and R650 (Table 6.7b), while 96,3% indicated that they are not buying tender documents as shown in Table 6.7a.

### 6.2.17 Major constraints in bidding

What do you think are other major constraints in bidding successfully for a tender?

Figure 6.9: Major constraints in bidding



The following are the major constraints cited by the respondents in bidding successfully for a tender.

- 41.4% of the respondents said that access to markets and supportive institutional arrangements are the major constraints;
- 14.3% maintained that CIDB grading and skills are major barriers;
- 12.9% revealed that corruption and nepotism is major barrier;
- 10% believe that annual pricing changes, some inspectors using last year's prices, and some prices that are very high are barriers;

- 8.6% stated that language barrier and difficulties in filling in tender documents are major barriers;
- 7.1% felt that tender documents are too expensive for emerging contractors and that the projects advertised are normally for big contractors;
- 4.3% stated that they are never informed why their bid was unsuccessful and it is therefore easy to repeatedly make similar mistakes; and
- 1.4 % said that the major barrier is the lack of implementation of the entire BBE policy.

A majority of respondents (41.4%) identified institutional arrangement and access to markets as the major challenge to bidding successfully. Jack and Harris (2007:99) indicate that, for historical reasons, Black people wanting to get involved in business usually have limited access to finance. He adds that there are relatively few empowerment companies who want to buy equity stakes in small businesses. Jack and Harris (2007:99) notes that deal making must be on a win-win basis, or business failure will result, as most businesses do not have substantial reserves. This really makes it hard for new enterprises to enter markets, since they do not have access to capital and financial institutions are sceptical when it comes to assisting new enterprises.

#### **6.2.18 Support mechanisms**

The types of support mechanisms provided are indicated in the Table 6.8.

If yes, what type of support? \* Is there any support mechanisms put in place by the Ministry for tenderers?

Table 6.8: Cross-tabulation – support mechanism

			Is there any support mechanisms put in place by the Ministry for tenderers?	Total
			Yes	
If yes, what type of support?	Training of tender and workshops for grade one constructors	Count % of Total	4 80.0%	4 80.0%
	The department holds workshops for filling tender documents and pricing	Count % of Total	1 20.0%	1 20.0%
Total		Count % of Total	5 100.0%	5 100.0%

Eighty percent of the respondents indicated that support mechanisms are in place, in the form of training tenderers and workshops, for CIDB grade one contractors.

#### 6.2.19 Type of training

If yes, what type(s) of training is provided? *vs* Does the Ministry provide training workshops for SMMEs to understand procurement and accrue necessary business skills?

The types of training workshops provided by the Ministry include those indicated in Table 6.9.

Table 6.9: Cross-tabulation – types of training workshops

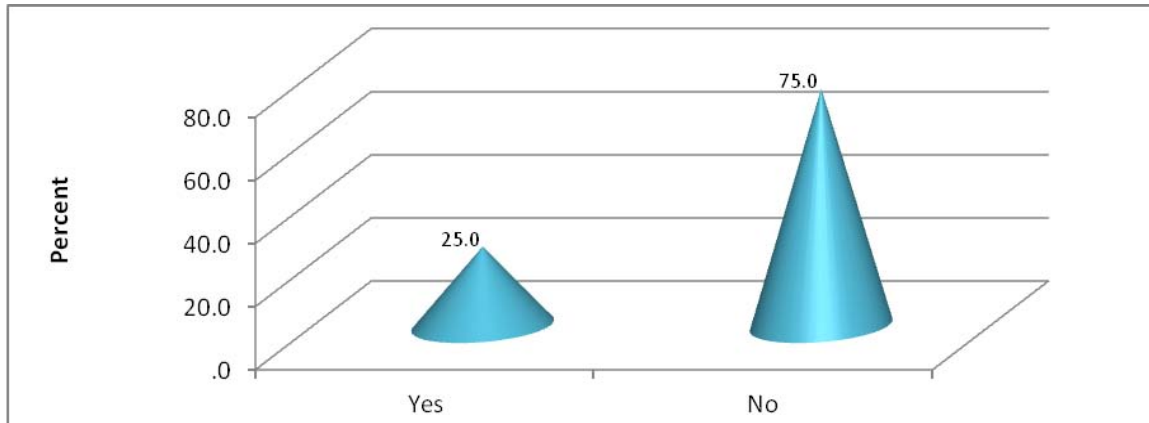
			Does the Ministry provide training workshops for SMMEs to understand procurement and accrue necessary business skills?	
			Yes	Total
If yes, what type(s) of training is provided?	Response to proposal writing	Count % of Total	3 50.0%	3 50.0%
	Business management skills	Count % of Total	1 16.7%	1 16.7%
	Business plan writing	Count % of Total	1 16.7%	1 16.7%
	Taxes and basic accounting skills	Count % of Total	1 16.7%	1 16.7%
	Total	Count % of Total	6 100.0%	6 100.0%

Surprisingly, the training provided by the Ministry is all business related and includes writing, management and accounting skills. There was no mention of training contractors to respond to and fill in tender documents, which are amongst the challenges mentioned by respondents.

### 6.2.20 Knowledge of policy

Have you ever heard of the Preferential Procurement Policy Framework Act?

Figure 6.10: Knowledge of policy

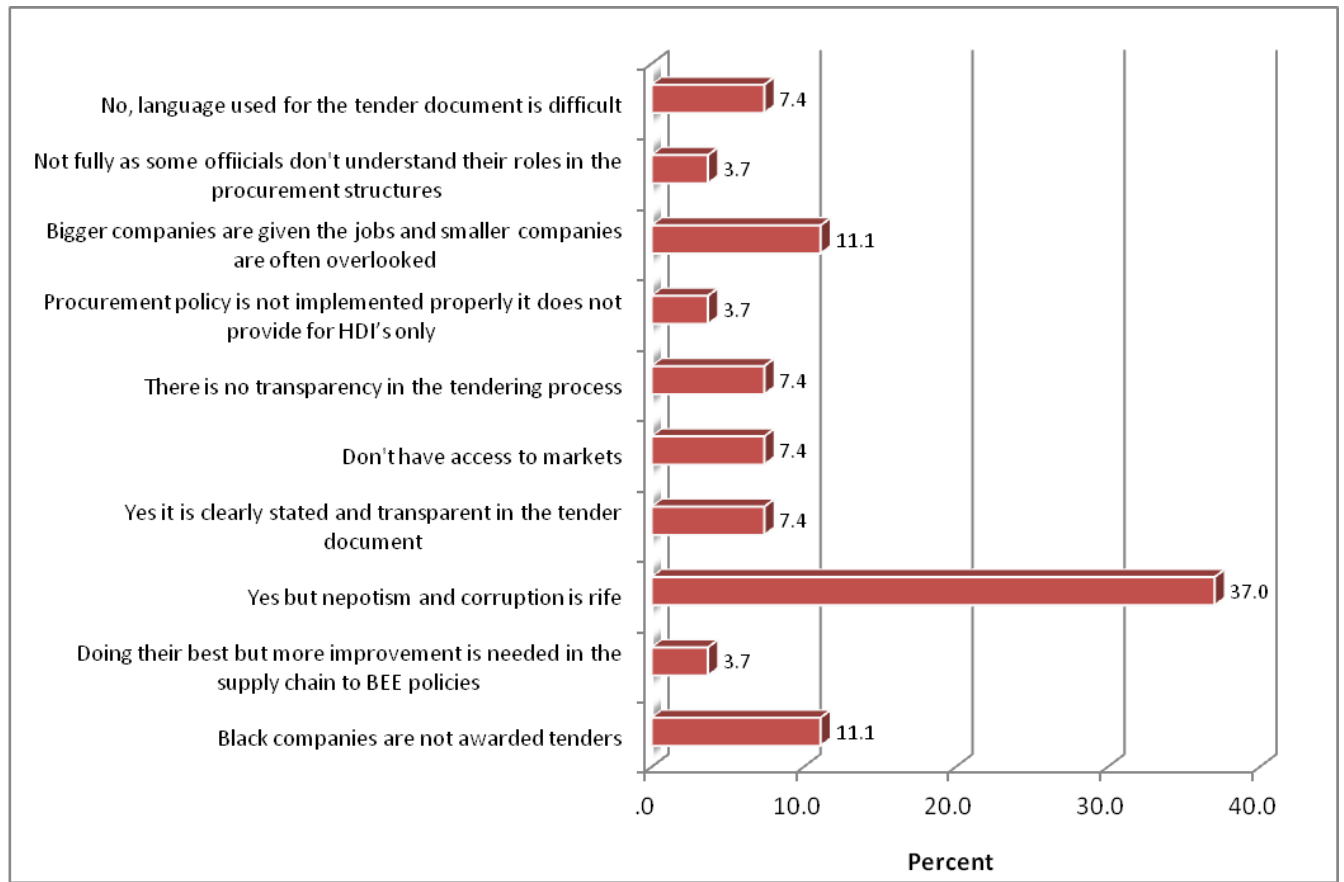


A quarter of the respondents (8 people) indicated that they had not heard of the Act. It appears that the Ministry has not informed or educated contractors about the purpose and objectives of this policy. Notifying the public about policies is key to safeguarding the values of transparency and fairness.

### 6.2.21 Policy compliance

In your opinion, do you think the Ministry adheres to the BEE prescriptions when it comes to procurement? The responses are shown in the Figure 6.11.

Figure 6.11: Policy compliance



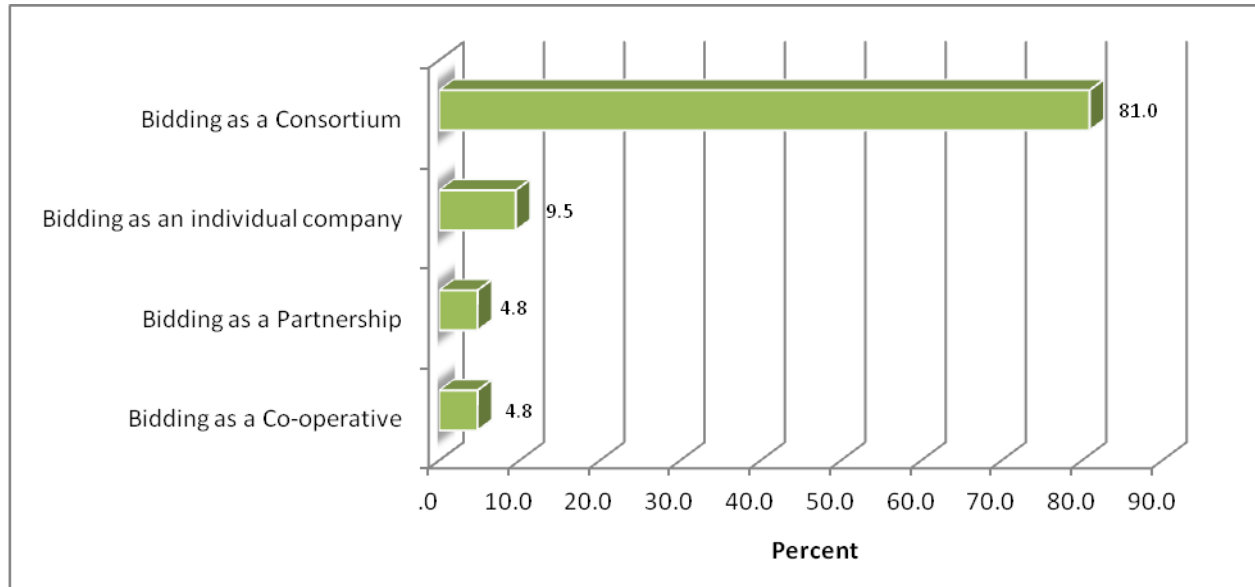
The majority of the respondents (37%), as indicated in Figure 6.11, said that the Ministry complies with the provisions of BEE but that nepotism and corruption are rife. Congress of South African Trade Unions (COSATU) General Secretary, Zwelinzima Vavi, said during an anti-corruption march in Durban that “as long as there is a corrupt minority, a perception will be made by people that politics have become dirty.” Vavi berated private companies involved in white-collar crime (Mkhize, 2010).

South African Communist Party (SACP) Secretary-General, Blade Nzimande added that: "there are thieves with ties who look respectable but are stealing other people's money. The public should be given a chance to comment about the businesses and know who they are. The public should also be told on what merits did the business receive the tender" (Mkhize, 2010). Nzimande stressed that condemnation of the tender procedures should not be regarded as an attack on the ruling African National Congress (ANC), COSATU and the SACP's alliance partner.

### 6.2.22 Favourable bidding period

When do you think your chances are better to bid successfully for a tender?

Figure 6.12: Favourable bidding period



Eighty one percent of respondents (See Figure 6.12), believe that they stand a better chance bidding as a consortium than by themselves. Jack and Harris (2007:91) note that a consortium originates when a group of people or businesses come together for a specific venture. Jack and Harris (2007), add that consortiums do not have joint control, but only voting rights and, therefore, companies engaging in empowerment deals with consortiums should only do so where there is a clear underlying business reason. The advantage of bidding as part of a consortium is that it allows small companies an opportunity to enter into the market since they merge with bigger companies.

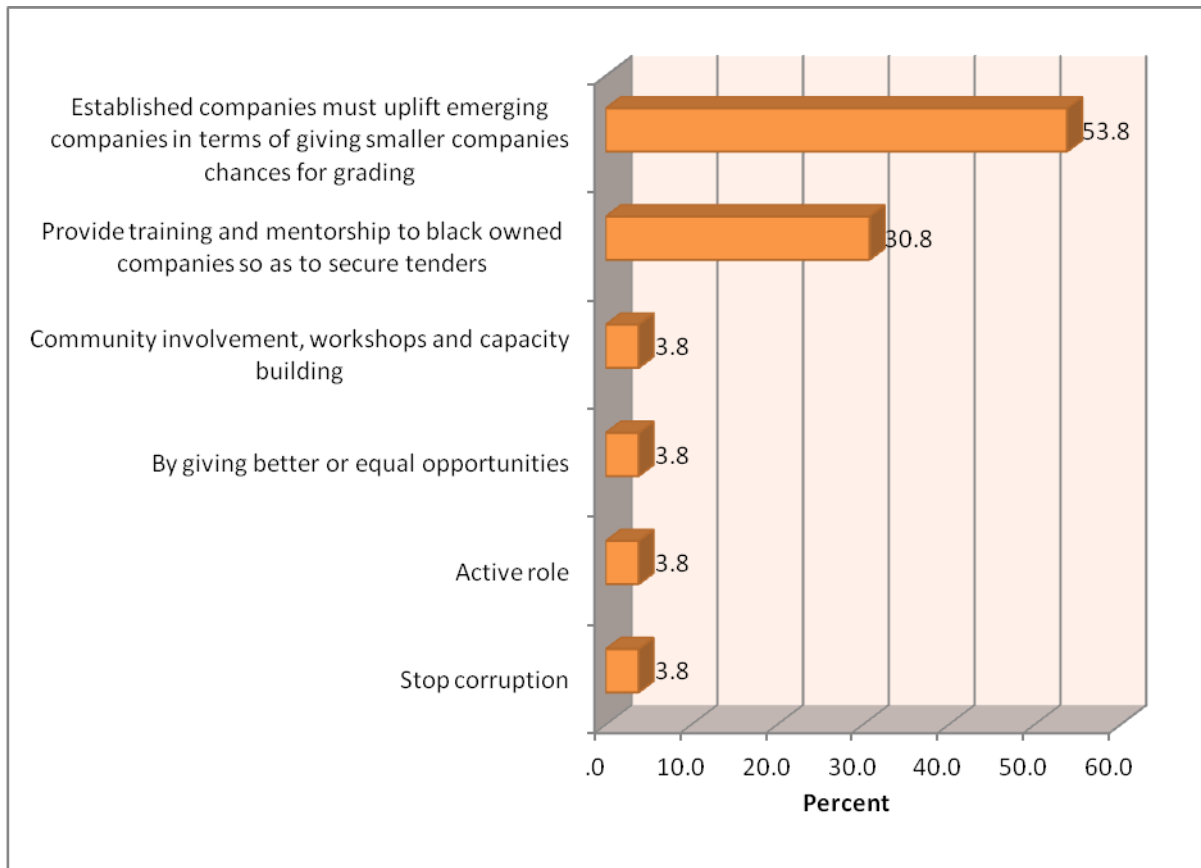
However, the disadvantages of working in a consortium relate to the complications of group dynamics and personality clashes, which result in differences in members' views, mission and objectives and thus affect the successful execution of the project.

### 6.2.22 Capacity building of SMMEs

What role would you like the Ministry to play in capacitating SMMEs?



Figure 6.13: Capacity building of SMMEs



The two predominant sentiments are the first two items in the Figure 6.13. About 53.8% of the respondents stated that established companies must uplift emerging companies by subcontracting to them in order that they can obtain a better CIDB grading; and 30.8 % were of the opinion that training and mentorship must be provided to Black-owned companies so that small companies meet the requirements for being awarded tenders.

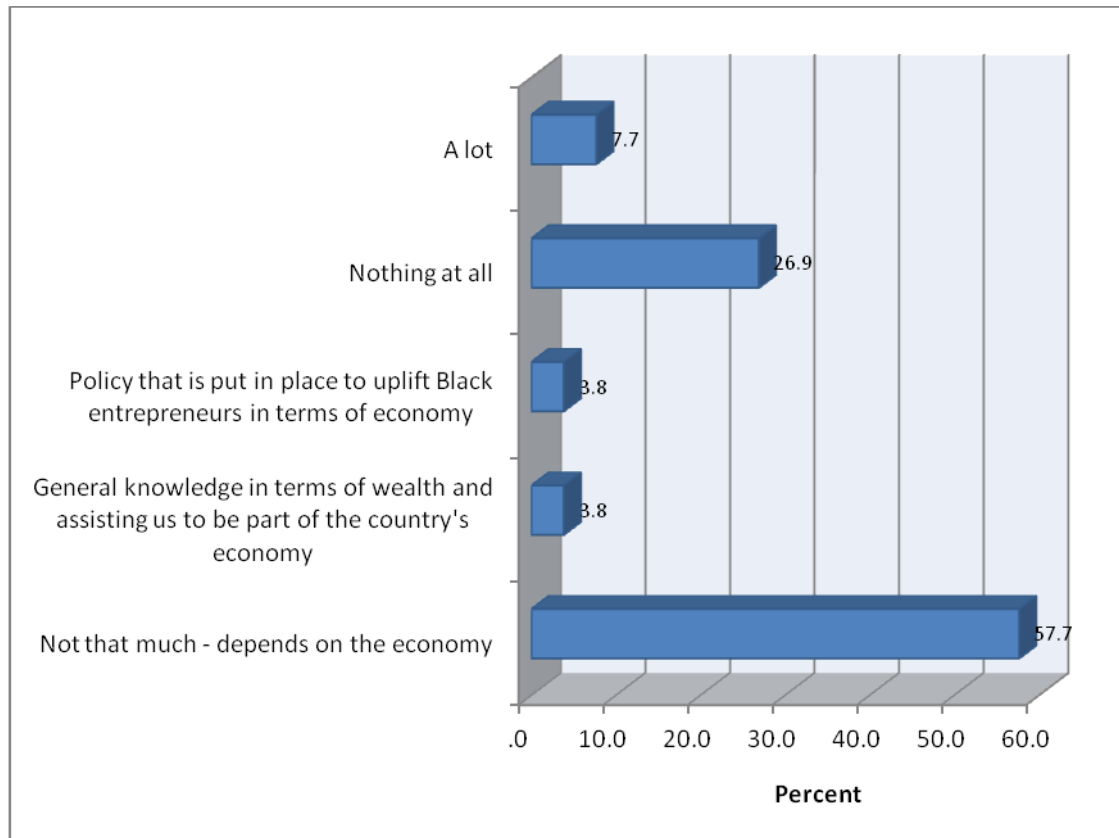
## Section D

### BLACK ECONOMIC EMPOWERMENT IN PROCUREMENT

#### 6.2.23 Understanding of BEE

How much do you know about BEE?

Figure 6.14: Understanding of BEE



As Figure 6.14 indicates, more than half of the respondents (57.7%) did not know much about BEE and felt that it depended on the state of the economy. More than a quarter (26.9%) knew nothing at all about BEE. These results create the impression that the Ministry is not transparent enough when it comes to public policies.

#### 6.2.24 Classification of the company

Is your company classified as previously disadvantaged?

Table 6.10: Company classification

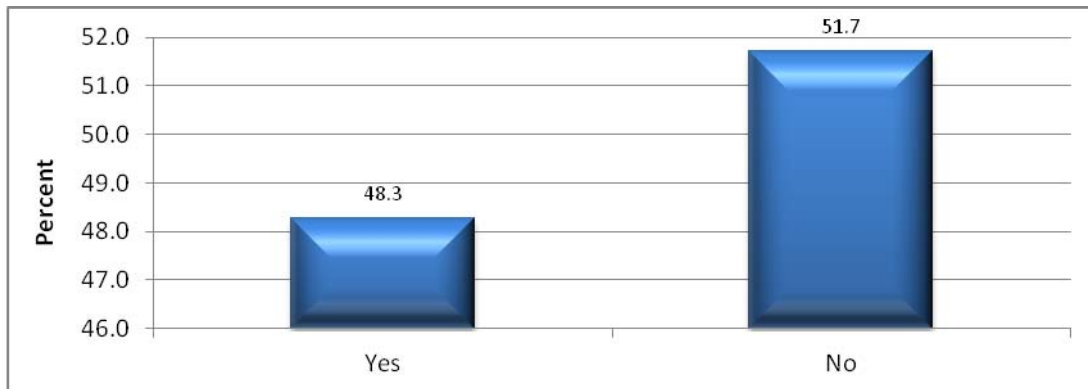
	Frequency	Percent
Yes	30	100

All of the respondents indicated that their companies were classified as previously disadvantaged as shown in Table 6.10.

### 6.2.25 Ministry compliance

Do you think the Ministry is in line with the legislative requirements of BEE?

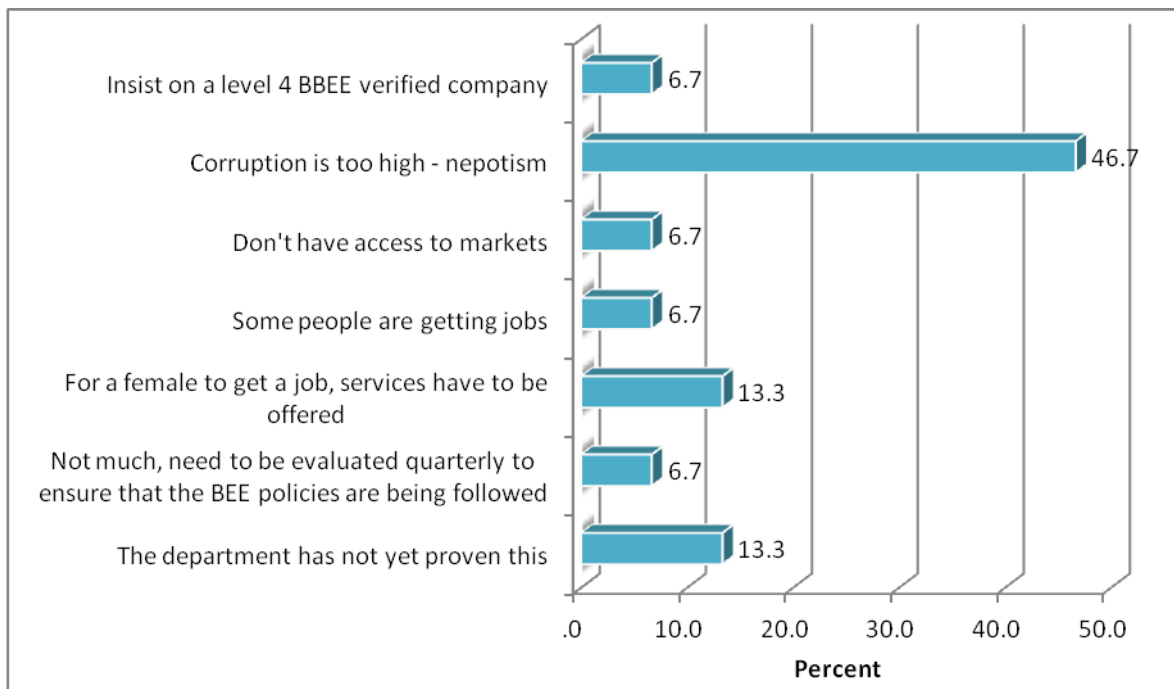
Figure 6.15a: Ministry compliance



Respondents were almost evenly split in terms of this question with 51.7% indicating that the Ministry is not in line with the legislative requirements of BBE (Refer to Figure 6.15a)..

If not, please explain.

Figure 6.15b: Negative response to the preceding question

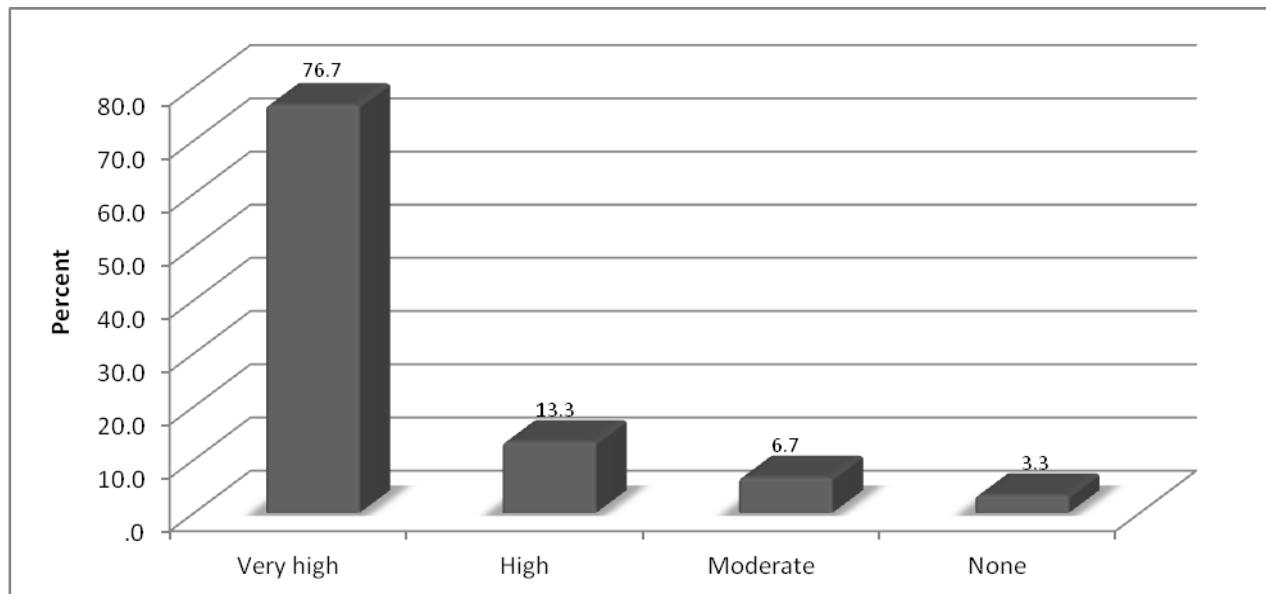


About 46.7% of the respondents (See Figure 6.15b) felt that the Ministry does not comply with the legislative requirements of BEE because of high levels of corruption and nepotism. In spite of the tender processes, the level of corruption within the Ministry remains a major concern. According to Soreide (2006:2), “the problem of corruption requires a broader approach, which also addresses the more sensitive issues of political corruption, involving ‘connections’, political pressure, predetermination of contracts, motivation behind renegotiations, rent-seeking, grabbing, *quid pro quo*s, signature bonuses, or whatever the different mechanisms are called”. He adds that procurement-related challenges are not seen as the consequence of institutional defaults in the responsible bureaucracies but are depicted as an opportunity to manipulate tenders from the perspective of companies as well as politicians and high-ranking civil servants.

#### 6.2.26 Effect of the scorecards

How much effect does a scorecard have on your success in tendering?

Figure 6.16: Effect of the scorecards



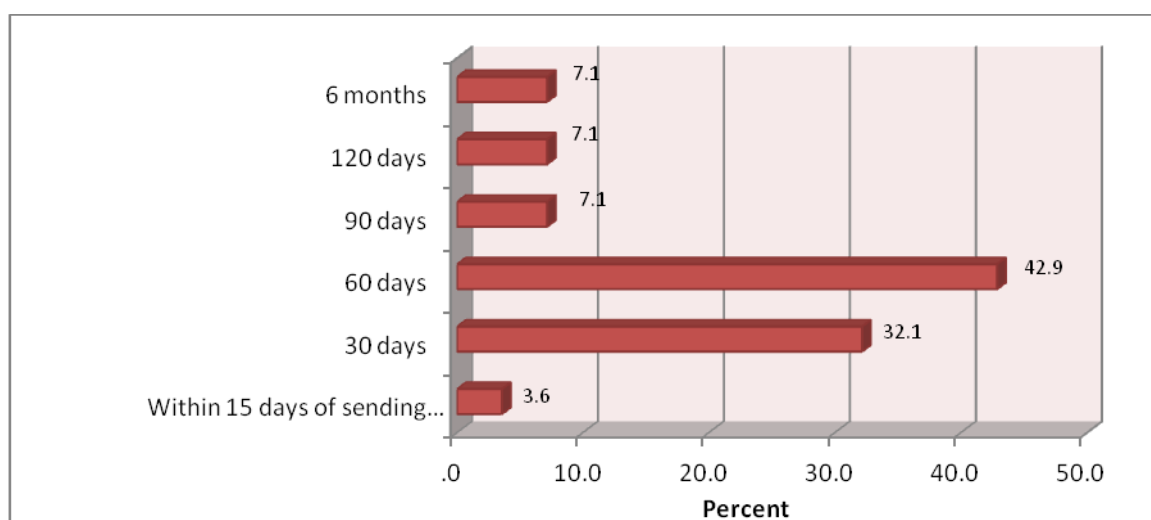
Nine out of ten (90%), according to Figure 6.16, respondents rated the effect of scorecards as being high. A scorecard is a method of calculating and providing a report on a company's contribution to BEE. It is classified in different ranks or levels and each rank confirms the level of contribution by the company. When government departments award tenders, scorecards are used to verify the company's BEE contributions by giving it a score

out of 100. A number of respondents were of the opinion that a scorecard plays a major role in securing tenders.

### 6.2.27 Time taken to pay SMMEs

How long does it take before SMMEs get their payment from the Ministry when they tender successfully?

Figure 6.17: Duration of payment of SMMEs

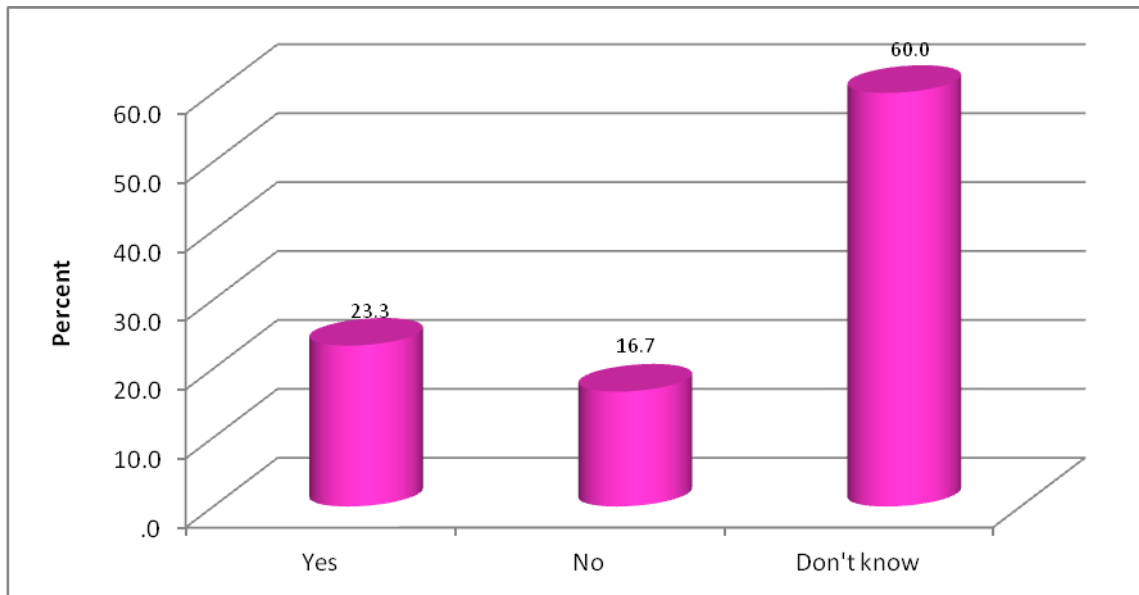


The majority of respondents (75%) agreed that payment is made between 1 and 2 months after the awarding of a tender (Refer to Figure 6.17). This is too long, considering the fact that SMMEs are not financially stable and the fact that for the project to be successfully executed, the contractor must have enough cash for contingencies.

### 6.2.28 Equity evaluation mechanism

Does the Ministry have equity evaluation mechanisms for tendering companies?

Figure 6.18: Equity evaluation mechanism

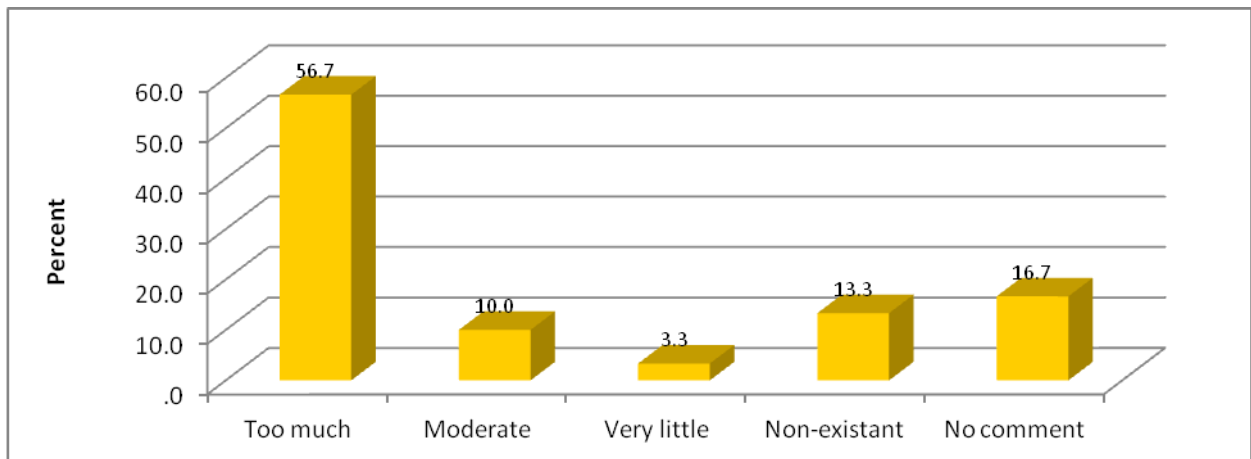


Sixty percent of the respondents were not sure. This shows a gap in information dissemination on the part of the Ministry.

#### 6.2.29 Level of corruption within the Ministry

According to your experience how much corruption exists within the Ministry's Procurement Department?

Figure 6.19: Level of corruption within the Ministry



About 56.7% of the respondents are of the opinion that the level of corruption in the Ministry's Procurement Department is extremely high.

If competitors pay bribes and officials receive bribes, other businesses are not only losing a fair opportunity to obtain the tender; they lose a lot of money and time in preparation to submit a tender document, and also suffer a lack of self-confidence and interest in tendering

in the future. While companies are aware that tender procedures are flawed, they choose not to report this for fear of being victimised in future contracts.

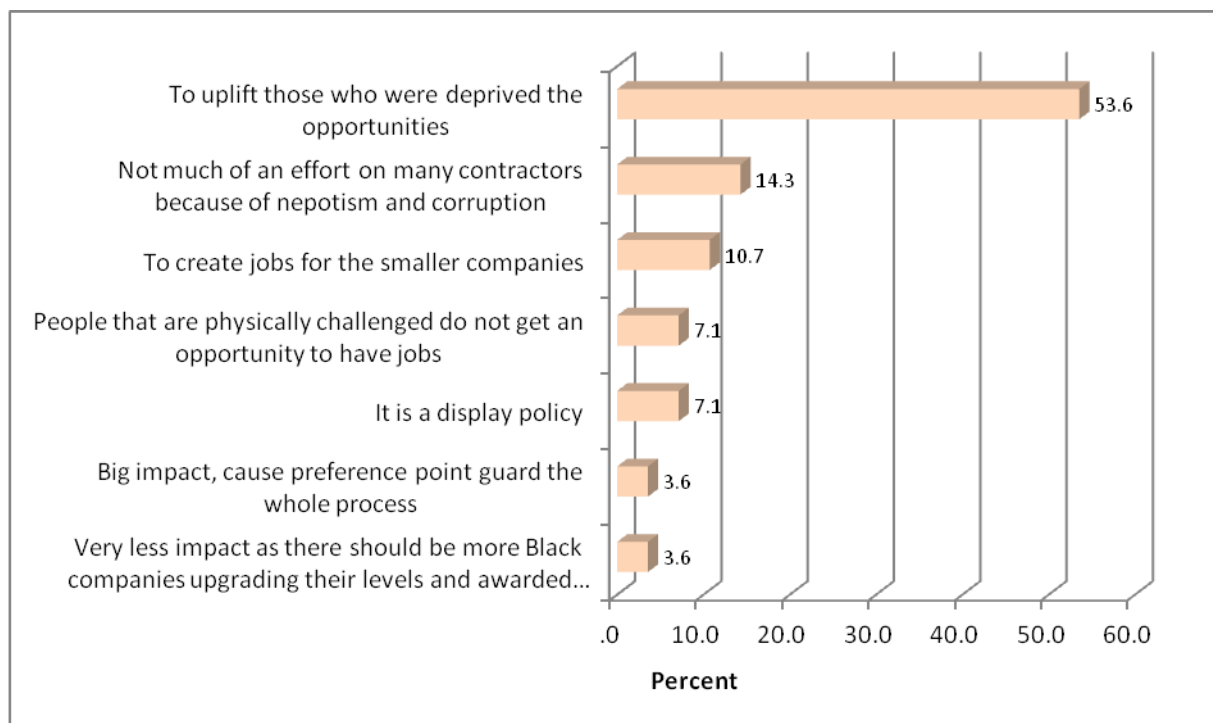
Soreide (2006:12) notes that opportunities to influence a tender through corruption can generally be grouped into the following categories:

- Hidden violations of procurement rules – it looks as if the rules have been respected;
- Legitimate deviations from procurement procedures – rules of exception are too frequently exploited;
- Diplomatic and political pressure; and
- Lack of whistle-blower reactions against corruption.

### 6.2.30 BEE's impact on tendering

In your opinion what impact does BEE have on tendering processes and procedures?

Figure 6.20: Impact of BEE in tendering



In Figure 6.20, it is clear that more than half of the respondents (53.6%) indicated that the impact of BEE on tendering is to give opportunities to those who were previously disadvantaged.

### 6.2.31 Support Mechanism for SMMEs

In your view is the Ministry providing enough support mechanisms for SMMEs?

Table 6.11: Support mechanism for SMMEs

	Frequency	Percent
Yes	5	16.7
No	23	76.7
Don't know	2	6.7
Total	30	100.0

More than three-quarters (76.7%) of respondents, as shown in Table 6.11, feel that the Ministry is not providing enough support for SMMEs. This is a clear indication that the Ministry is failing to comply with the prescriptions of BEE. The following questions are key to understanding enterprise development (Jack and Harris, 2007:168):

- What is being done to enhance the financial capacity of the beneficiary enterprise?
- What is being done to enhance the operational capacity of the beneficiary enterprise?

Jack and Harris (2007:168) add that the objective of scorecards is to help those Black enterprises that are looking for help to achieve independent operational and financial capacity. The findings show that the Ministry is at odds with the objective of the scorecards.

## DATA COLLECTED FROM STAFF MEMBERS OF THE MINISTRY

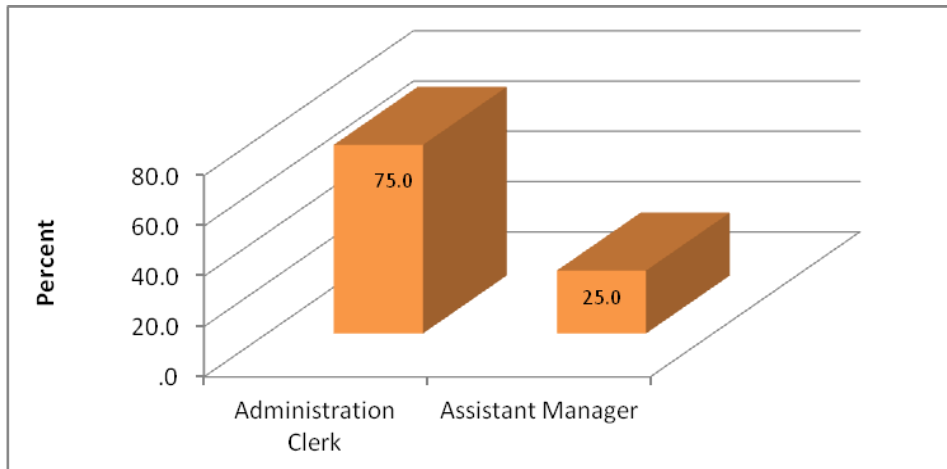
### SECTION A: GENERAL UNDERSTANDING

The figure and tables provide general information and the views of the respondents relating to BEE.



### 6.2.32 Designation of the respondents

Figure 6.21: Designation of respondents



Three quarters of the respondents were Administration Clerks (75%) and the remaining quarter (25%) were Assistant Managers.

### 6.2.33 General understanding of BEE

All of the respondents (100%) agreed on the following:

Table 6.12: General understanding of BEE

Question	Response
What is your general understanding of BEE?	It is the policy and tool of the government to empower Black people economically
What is it meant to achieve it?	To improve the socio-economic conditions of the Black and eradicate the legacy of apartheid through business opportunities
What are the objectives of the BEE?	Empower more Black people to own and manage enterprises - substantial change in the racial composition of ownership

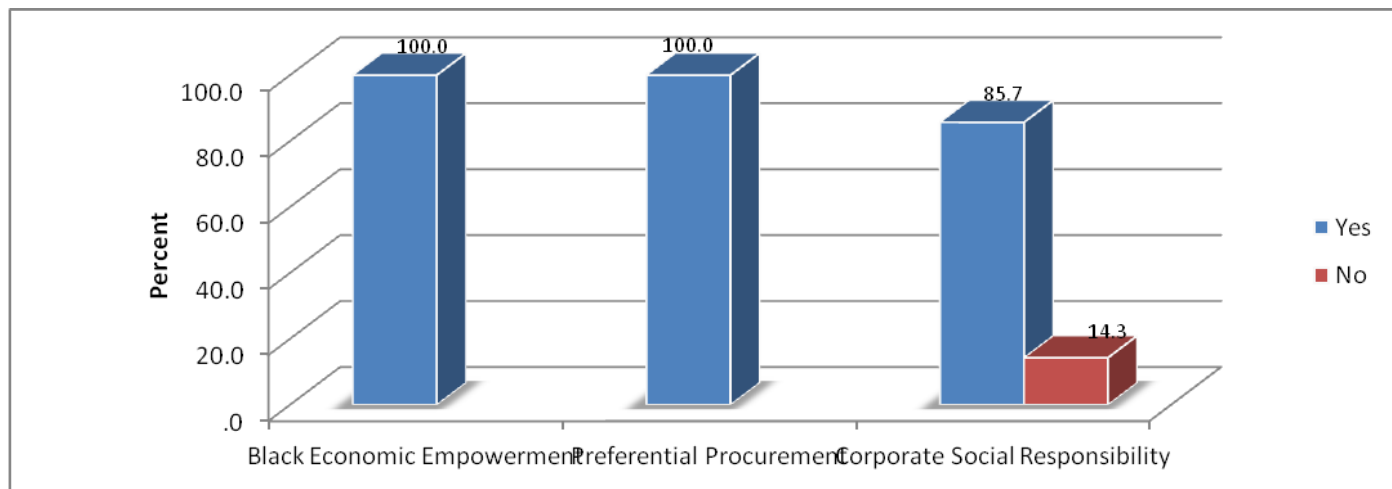
## SECTION B: POLICIES

This section investigates the types of policies that are in place regarding BEE.

### 6.2.34 Existing policies

Figure 6.22 shows responses to the question: “Does the Ministry have the following policies in place?”

Figure 6.22: Existing policies



All of the respondents agreed that BEE and preferential procurement are in place, with 14.3% disagreeing that Corporate Social Responsibility is in place. It is surprising that some respondents are of the opinion that the Ministry does not have Corporate Social Responsibility Policy. All these policies were requested from the Department and while the first two were provided, the last one was not. This raises a question as to whether this policy exists. A Corporate Social Responsibility Policy is important in advancing the interest of society. As Van den Ende remarks: “The crux of social responsibility is that the organisation should in every respect be a good corporate citizen, talk about business ethics, corporate accountability and sustainability, one that respect the right of employees and consumers and assist the disadvantage” (Van Den Ende, 2004:2).

### 6.2.35 Structure of BEE policies in the Ministry

Table 6.13 shows response to “How has the Ministry structured its BEE policies?”

Table 6.13: Structure of BEE policies in the Ministry

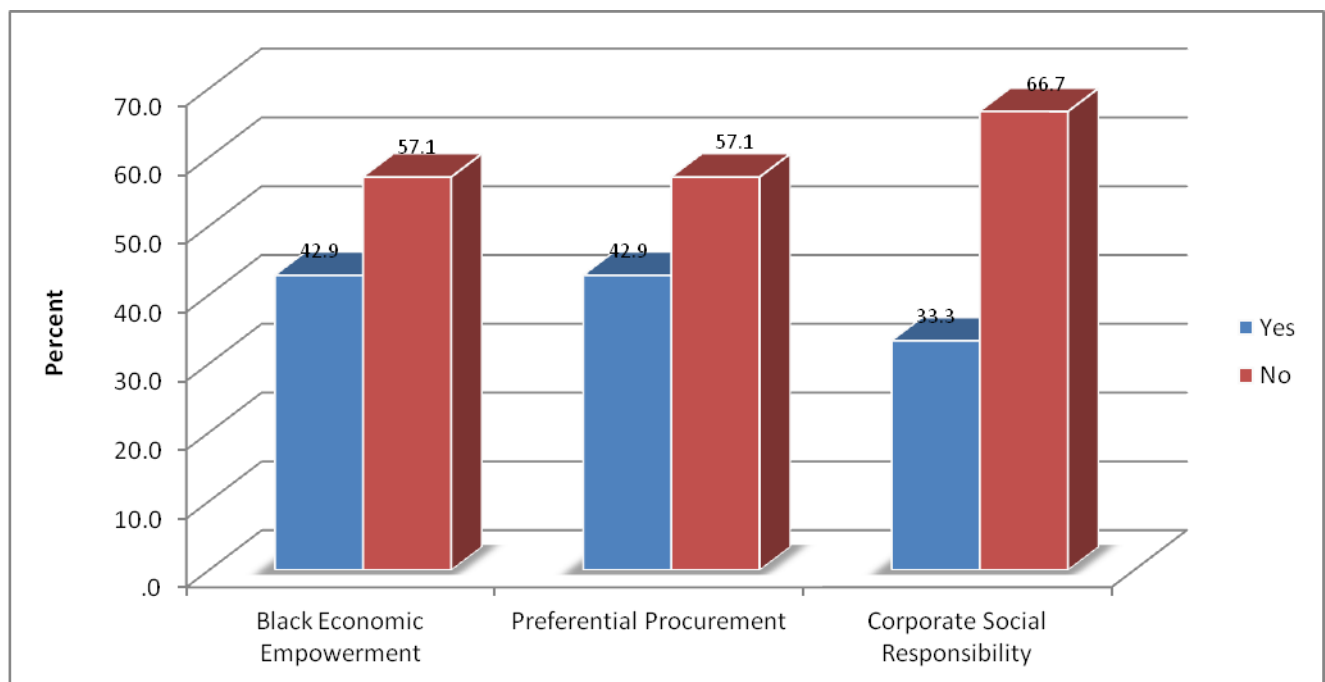
	Frequency	Percent
Preferential Procurement Policy	8	100.0

All of the respondents indicated that the Ministry is using the preferential procurement policy as a tool of to meet its BEE objectives.

### 6.2.36 Formal review of the policies

Figure 6.23 reflects responses to the question: “Is there a formal review process in place for the policies mentioned below?”

Figure 6.23: Formal review of policies



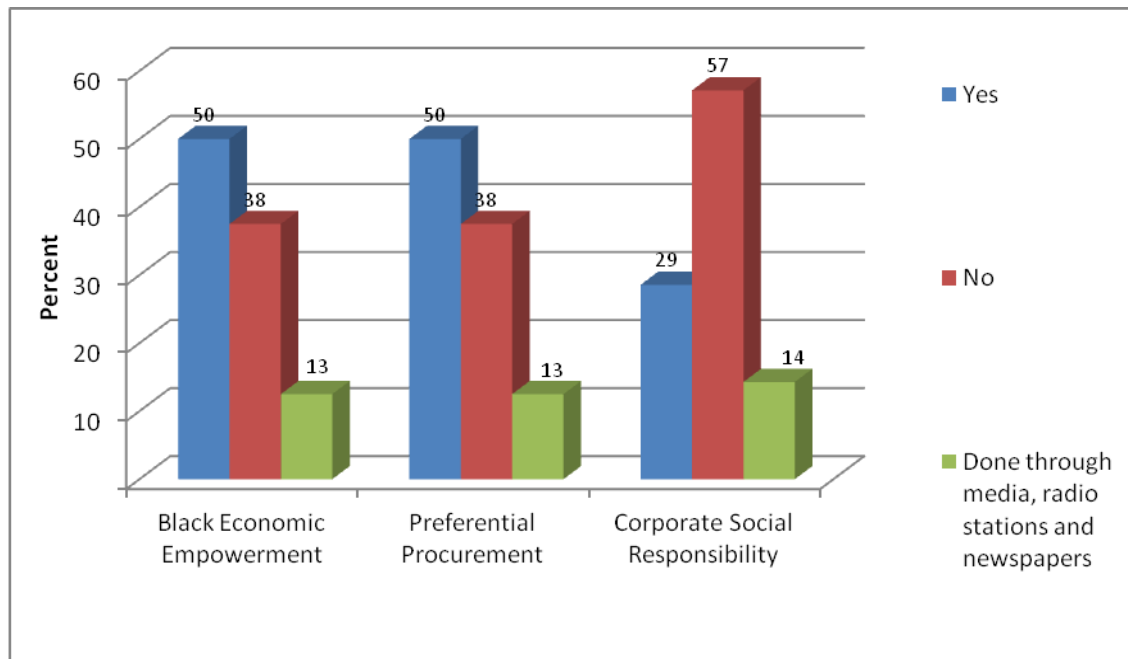
One respondent indicated that frequent reviews were performed by Head Office. The responses recorded in the graph are a matter for grave concern. About 57.1 % of the respondents said that the Ministry does not have review mechanisms for the BEE Policy and the Preferential Procurement Policy, while 66.7% stated that there is also no review mechanism for the Corporate Social Responsibility Policy. It is clear that the Ministry does not review its policies. By so doing, it risks not achieving the objectives of its policies. It is

very important to review policies annually. Policies are reviewed so as to ensure that everyone understands the processes and the procedures, what is expected of them, and to ensure effective communication, which leads to the expected outcome. There are no guarantees that processes and procedures are perfect. Regular policy reviews are essential in order to identify gaps, achievements and challenges.

### 6.2.37 Availability of policies to the public

Are the above policies publicly available?

Figure 6.24: Availability of policies to the public

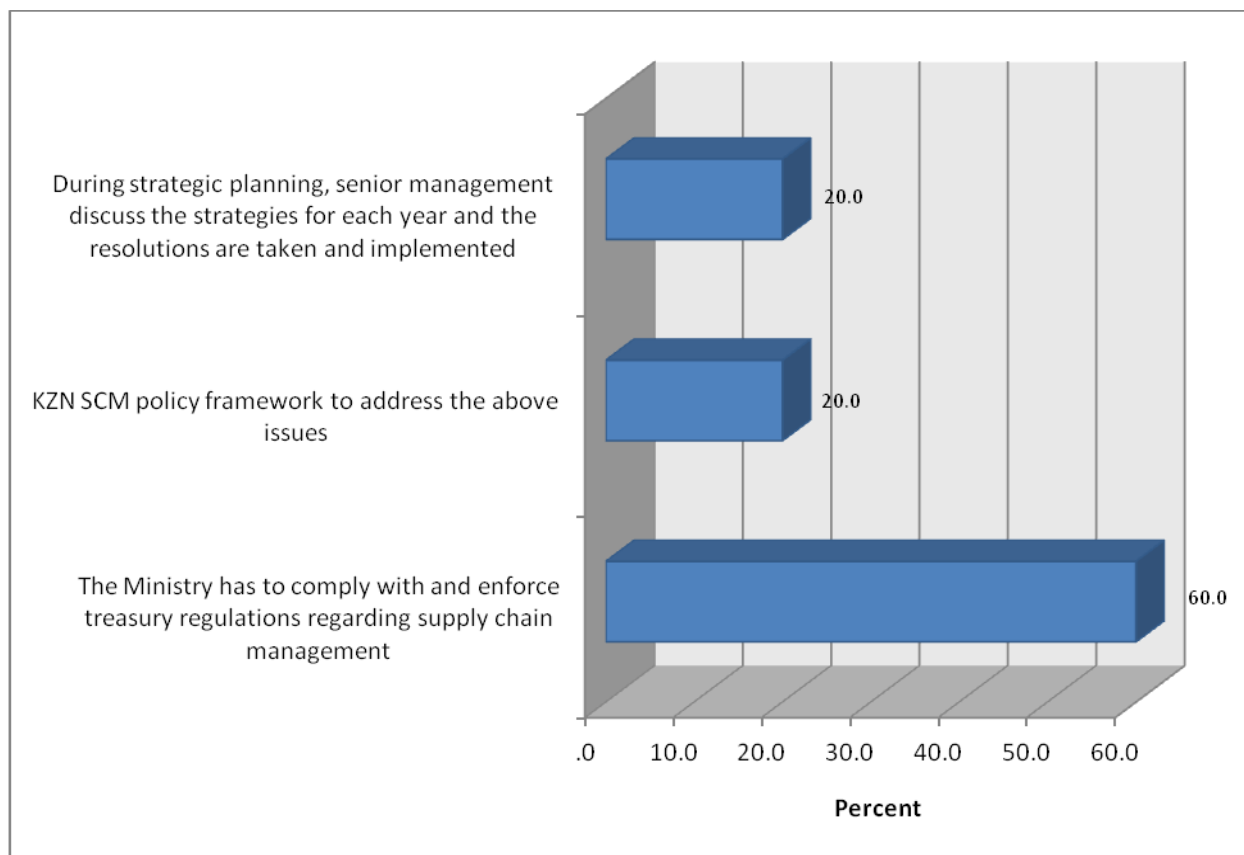


There was a positive difference for BEE and Preferential Procurement policy, but there were more negative responses when it came to corporate social responsibility. On average, 13% of respondents indicated that the policies were available *via* various media. The result for corporate social responsibility makes one wonder if the Ministry has such a policy in place.

### 6.2.38 Strategic perspective of BEE, Preferential Procurement and Corporate Social Responsibility

If the Ministry does not have a policy or statement of intent for any of the issues listed above, please provide details as to how the Ministry addresses these issues from a strategic perspective and how these matters are regulated within the Ministry.

Figure 6.25 : Regulation of BEE, Preferential Procurement and Corporate Social Responsibility Policy



Approximately 20 % of the respondents (See Figure 6.25 ) indicated that from the strategic point of view BEE, Preferential Procurement and Corporate Social Responsibility policies are addressed and regulated during the annual strategic planning process, where senior management discuss the strategies for each year and resolutions are taken and implemented. Twenty percent of the respondents said that the Ministry uses the KwaZulu-Natal Supply Chain Management Policy Framework to address policy issues. Sixty percent of respondents said that the Ministry has to enforce and comply with Treasury regulations regarding supply chain management.

## **SECTION C: INDIRECT EMPOWERMENT**

This section investigates the policies and factors that result in indirect empowerment.

### **6.2.39 Total procurement spend in 12 months**

What was your total procurement spend in the past 12 months? The rand and percentage spend for different scenarios is summarised in Figure 6.26.

Figure 6.26: Total procurement spend in 12 months

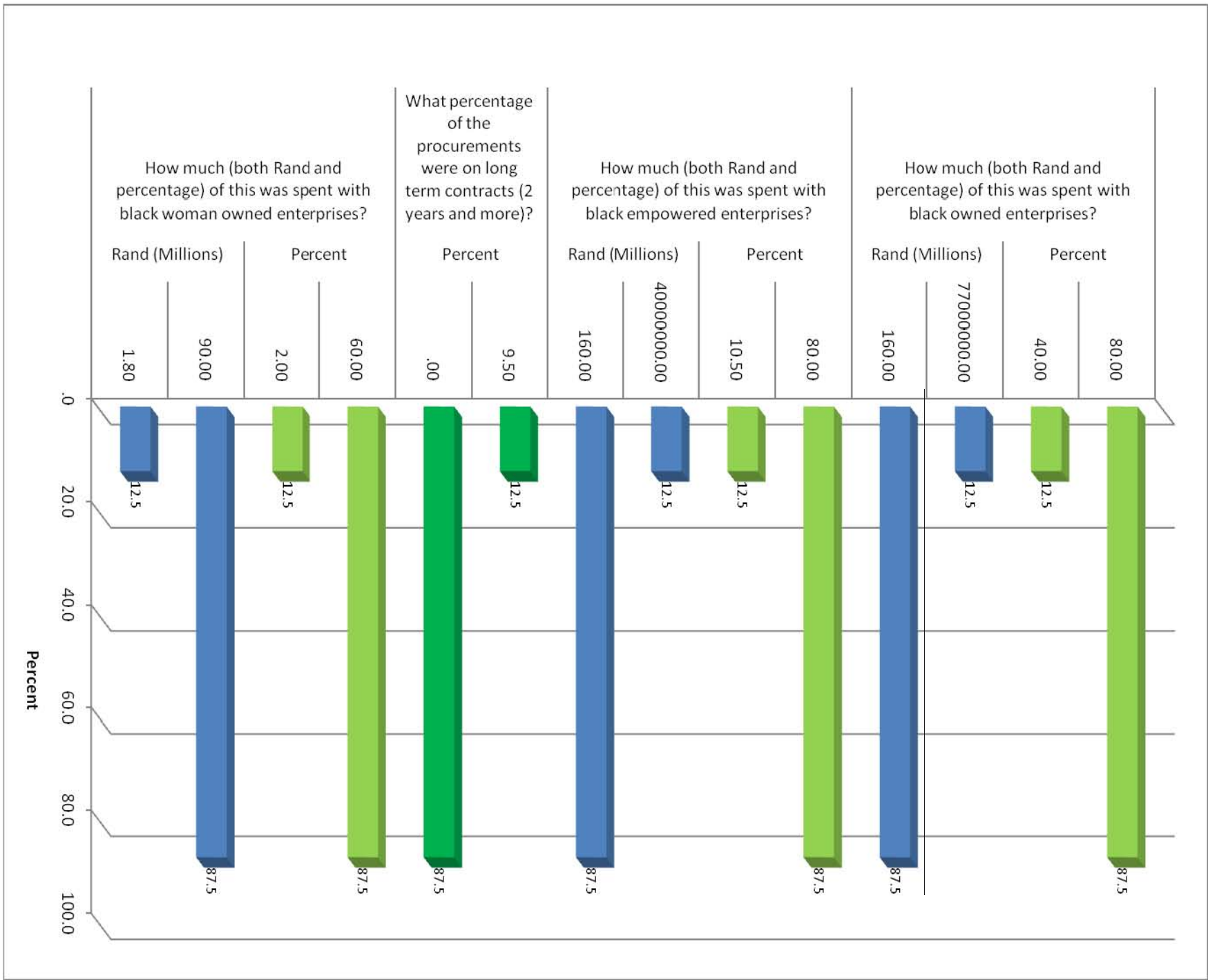


Figure 6.26 indicates that sixty percent (60%) of the funds, which amounted to R90 million, was allocated to businesses owned by Black women. Approximately 80% of funds, which amounted to R 77 million, was allocated to Black-owned enterprises while 80%, which amounted to R40 million, was spent on Black empowerment enterprises. Finally, 87.5% of procurement funds were spent on long-term contracts of 2 years and more. The R40 million claimed to be allocated to Black empowerment businesses is questionable, because the findings have revealed that small businesses are battling to secure tenders due to their low CIDB grading. If it is true that R40 million has been allocated to small businesses, one could conclude that only a few SMMEs are benefiting, which may be because they are paying bribes. It has been indicated that the corruption is rife in the Ministry.

## **SECTION D: CONTRACTORS**

This section looks at how the policies affect contractors in terms of, amongst other things, appointment.



## 6.2.40 Standardised procedures for appointing contractors

Does the Ministry have a standardised procedure for selecting contractors or for assessing tenders? Table 6.14 presents the results for this question.

Table 6.14: Standardised procedures for appointing contractors

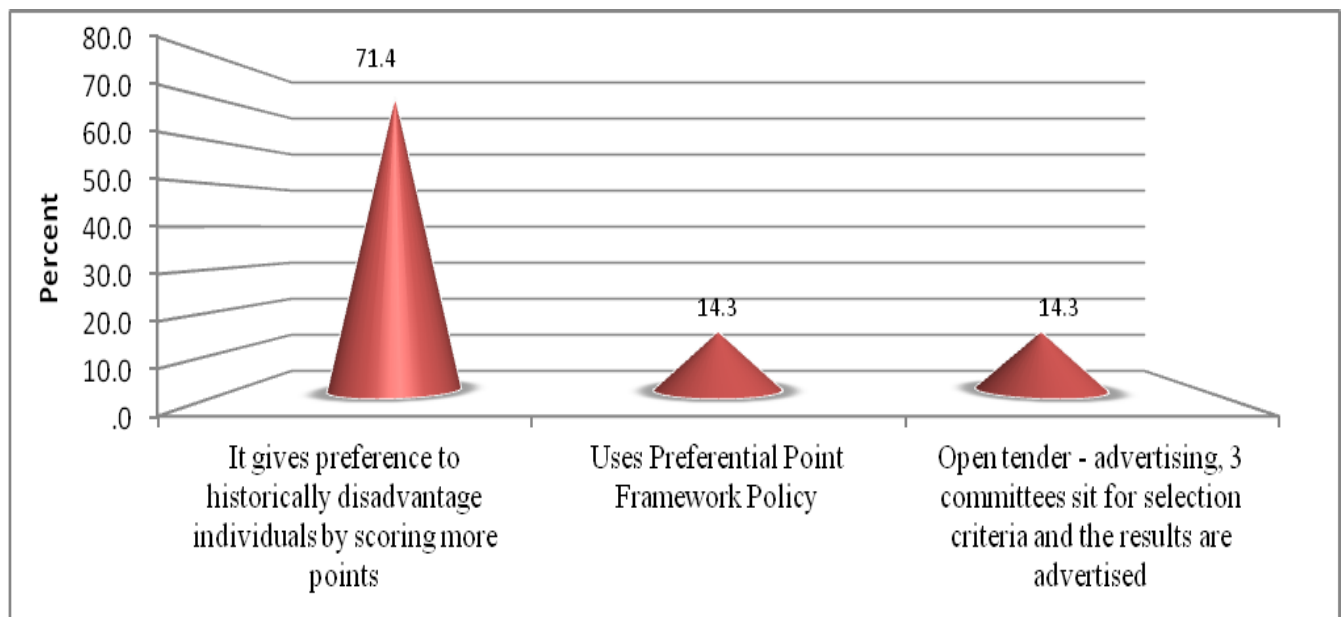
				Does the Ministry have a standardised procedure for selecting contractors or for assessing tenders?		Total
				Yes	No	
Provide	A preference point	Count		4	0	4
Reasons	system is used	% of		57.1%	.0%	57.1%
		Total				
	Graded according to	Count		0	1	1
	grades by CIBD	% of		.0%	14.3%	14.3%
	Contractors on the	Total				
	same level, pre-					
	screening committees					
	are formed					
	Procurement strategy	Count		1	0	1
	which gives details on	% of		14.3%	.0%	14.3%
	how processes needs to	Total				
	take place					
	Ministry's standard	Count		1	0	1
	payment is within 30	% of		14.3%	.0%	14.3%
	days and successful	Total				
	bidders are called to					
	accept the offer					
Total		Count		6	1	7
		% of		85.7%	14.3%	100.0%
		Total				

About 57.1% of respondents indicated that the Ministry uses the preference point system as a standardised procedure for selecting contractors or for assessing tenders. The respondent who answered “no” indicated that the grading was done by CIBD (14.3%), which the respondent considered to be outside the ambit of the Ministry. About 14.3% of the respondents said that the procurement strategy provides direction on how processes need to take place. Classification of contractors according to CIDB grade has placed additional limitations on the strategic objective of socio-economic development.

#### 6.2.41 Support for BEE

How does this process support BEE?

Figure 6.27: BEE Support

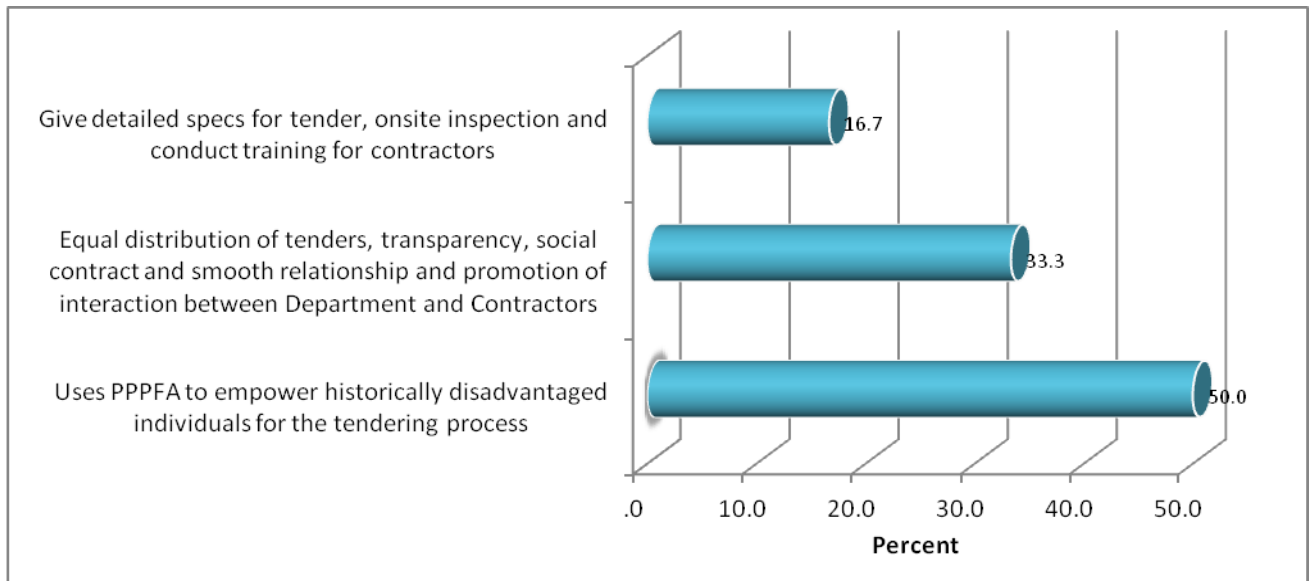


Nearly three-quarters of the respondents indicated that the process supports BEE by giving preference to previously disadvantaged individuals, who score more points.

#### 6.2.42 Role of the Ministry in BEE

What role does the Ministry play in terms of BEE especially on tendering?

Figure 6.28: Role of the Ministry in BEE

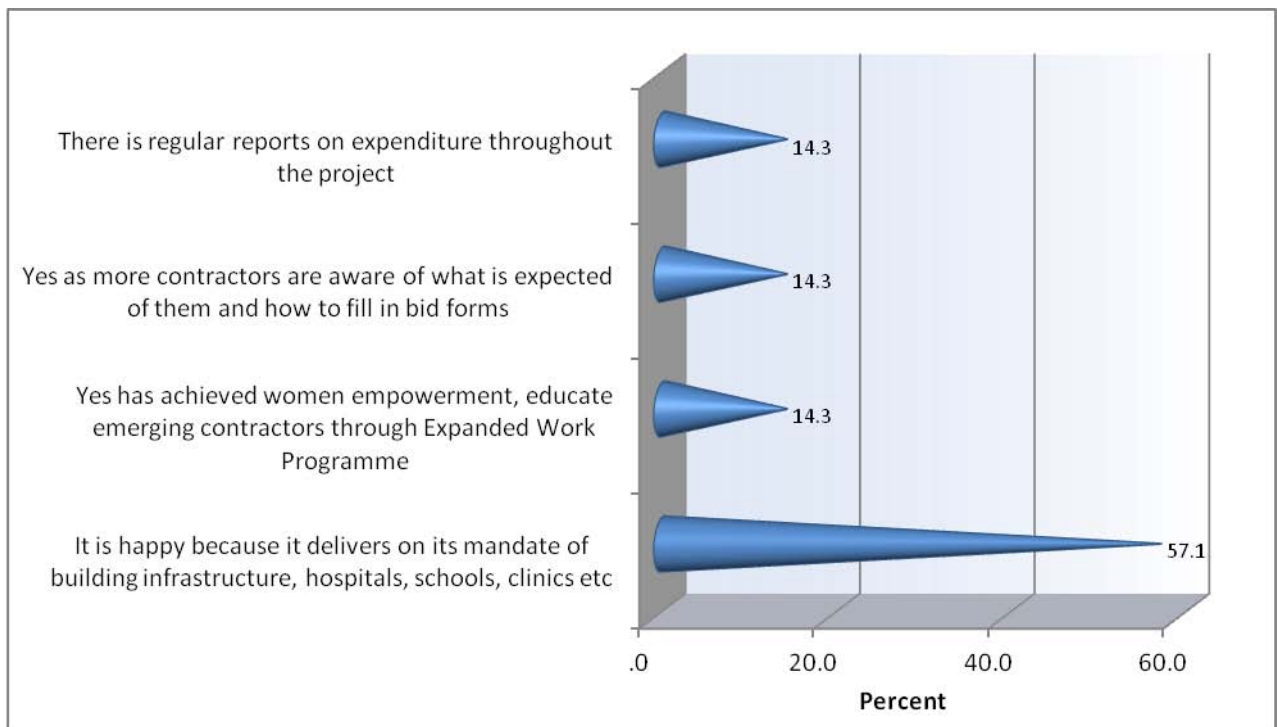


Half (50%) of the respondents indicated that the Ministry uses the Preferential Procurement Policy Framework Act to empower HDIs.

#### 6.2.43 Achievements

Is the Ministry happy with the results it has achieved so far?

Figure 6.29: Achievements

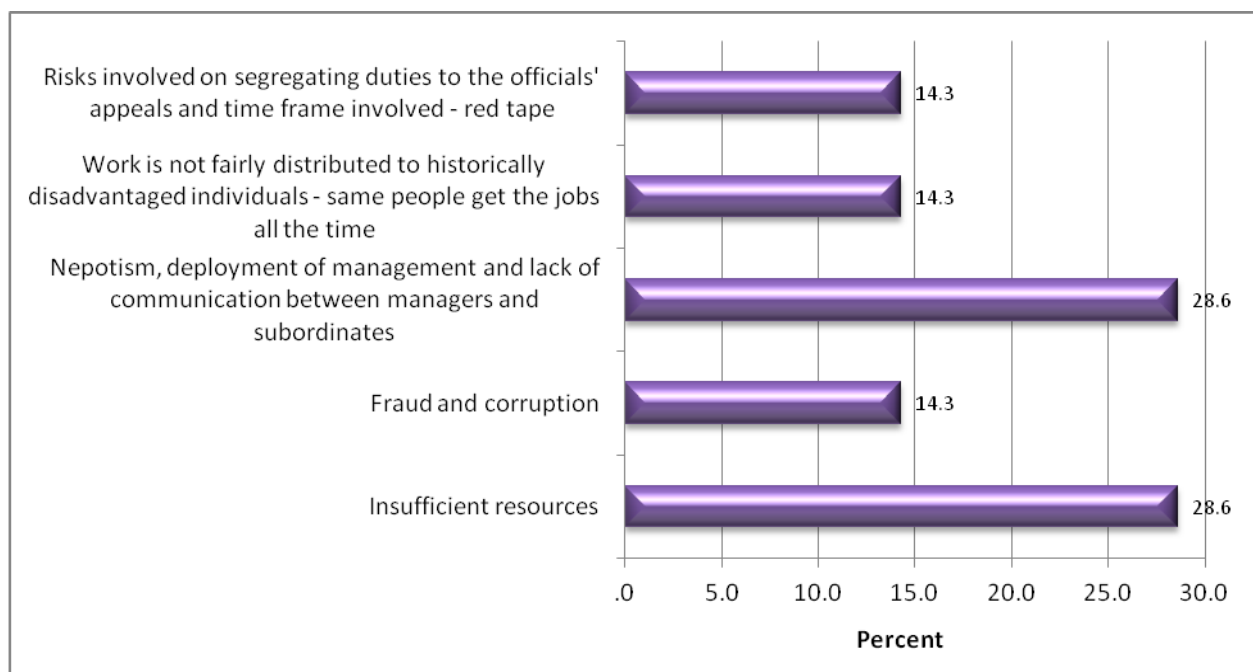


Nearly 60% of the respondents indicated that the Ministry is happy as it is achieving goals and targets such as provision of infrastructure, hospitals, schools, and et cetera. The high level of perceived achievement is not related to the objectives of BEE, but more to infrastructure development. Jack and Harris (2007:15), note that, amongst other things, the main objectives of BEE are to address the economic legacy of apartheid by increasing the number of Black people with ownership, management, and control of the mainstream economy. Positive results cannot be achieved if there are no set targets and if the Ministry does not review its policies.

#### 6.2.44 Challenges

What challenges are faced by the Ministry in its quest to deliver on its mandate?

Figure 6.30: Challenges



The responses to the question are fairly disappointing. About 14,3% of the respondents indicated that work is not fairly distributed to HDIs, but only given to the same contractors. Nepotism, deployment of management and lack of communication between managers and subordinates (26.6%) also seem to be a problem. This shows that the tender process is being manipulated by officials who receive bribes or kickbacks from contractors through direct negotiations. This compromises tender procedures.

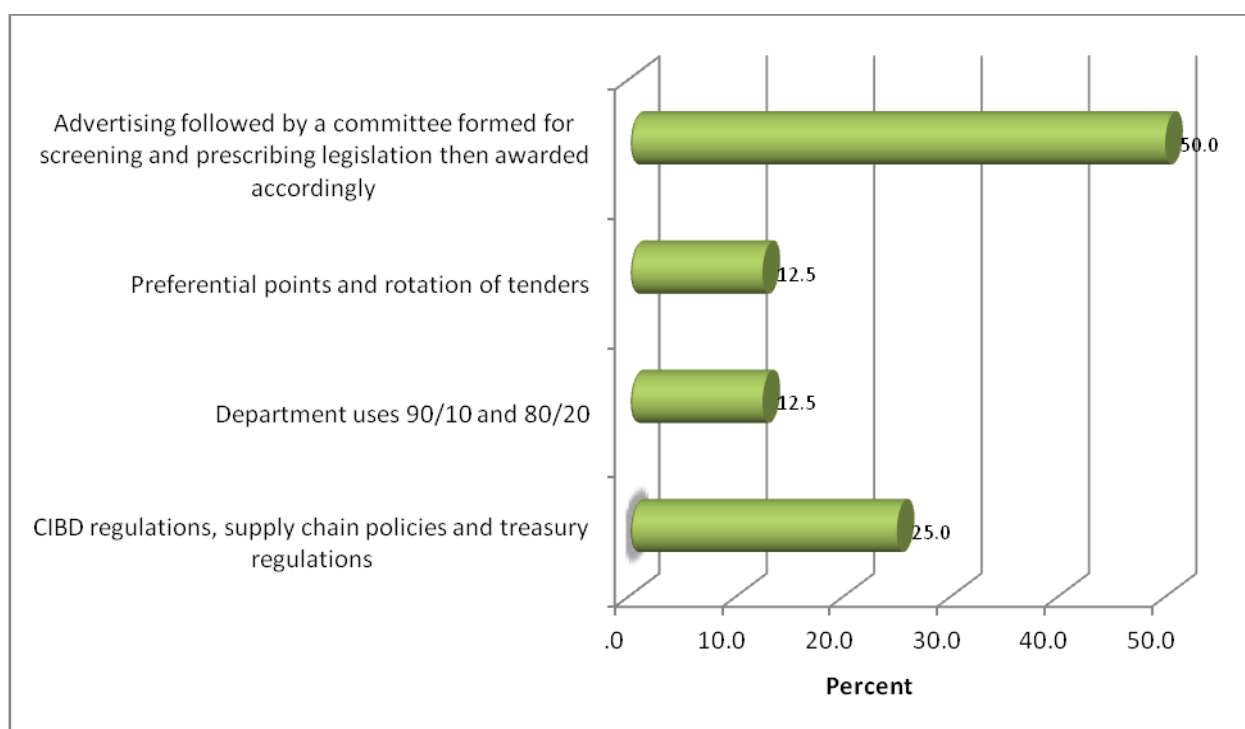
## SECTION E: COMPLIANCE

This section investigates compliance with the framework for implementing policies.

### 6.2.45 Procedure used by the Ministry

Which procedure is used by the Ministry when awarding tenders?

Figure 6.31: Procedure used by the Ministry

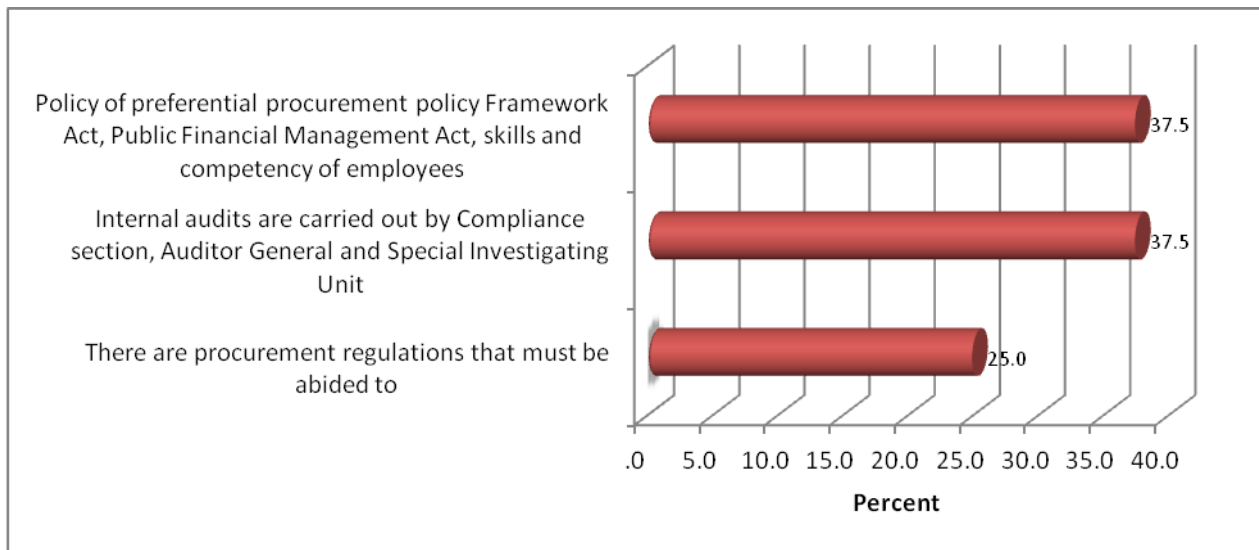


Half of the respondents (50%), according to Figure 6.31, indicated that the Ministry advertises, selects and awards tenders on the recommendation of the selection committee. Others stated that the Ministry uses the points system, which abides by the 90/10 and 80/20 principles.

### 6.2.46 Legislative compliance

How does the Ministry ensure that it achieves and maintains legislative compliance?

Figure 6.32: Legislative compliance

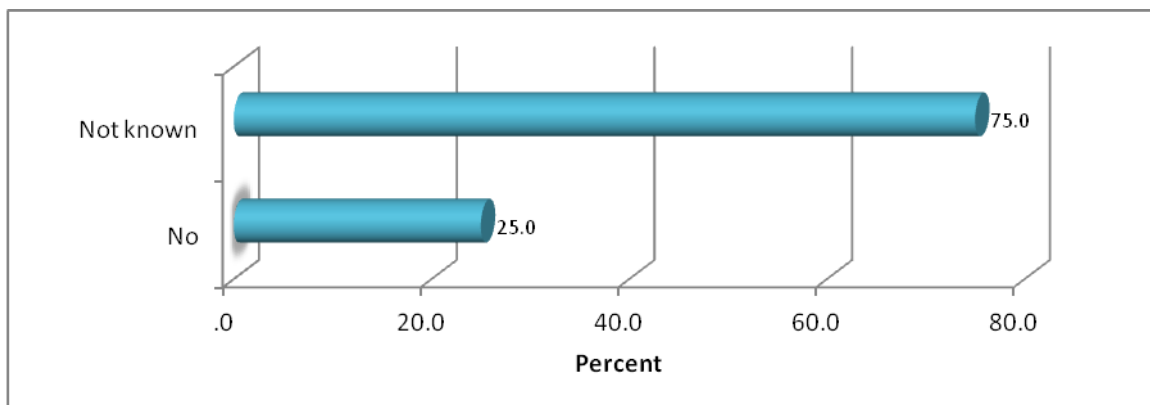


According to figure 6.32, a number of respondents (37.5%) indicated that each of preferential procurement policy and internal audits are key factors in achieving compliance. The remaining respondents highlighted that there are regulations that need to be followed. One may conclude that even though the regulatory policies are in place, there are some officials who do not completely adhere to them.

#### 6.2.47 Non-compliance directive

Has the Ministry been issued with a directive in relation to non-compliance with any law?

Figure 6.33: Directive of non-compliance

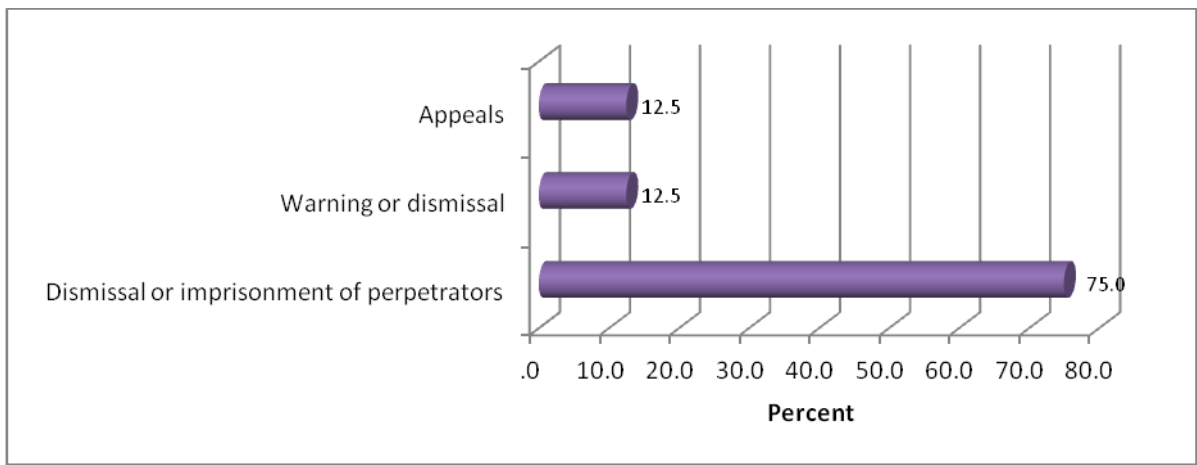


It is strange that 75% of the respondents who are working in the Procurement Department of the Ministry are unable to respond to this question. This is an indication of poor communication within the Ministry and lack of transparency.

**6.2.47 Consequences of non-compliance**

What are the consequences of non-compliance?

Figure 6.34 Consequences of non-compliance



Three-quarters (75%) of the respondents noted that dismissal and allowing the law to take its course are the primary results of non-compliance.

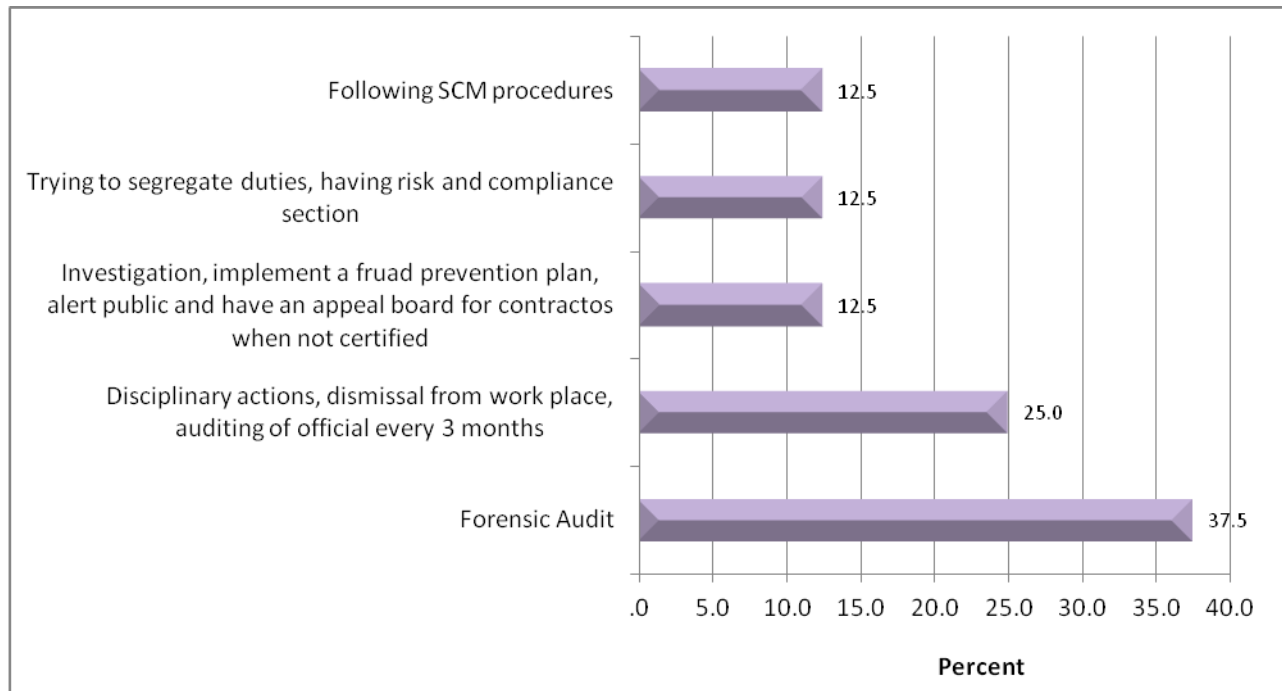
**SECTION F: ANTI-CORRUPTION MEASURES**

This section deals with anti-corruption measures.

**6.2.48 Anti-Corruption measures**

What measures are in play to deal with corruption?

Figure 6.35 Anti-corruption measures



About 36.7% of the respondents indicated that the Ministry involves forensic auditors to deal with corruption in the Ministry

## 6.4 CONCLUSION

The findings of the study have revealed, amongst other things, the following issues of concern:

- 96.7% of respondents agree that the Ministry does not give reasons as to why a tender was not successful;
- 29.4 % of the respondents are of the opinion that preference is not given to SMMEs because they do not have money to start up their businesses and their current CIDB grade 1 does not allow them to be awarded any projects;
- 46.7% stated that the Ministry does not comply with the legislative requirements of BEE because nepotism and corruption are too prevalent.

These findings give rise to major concerns regarding the impact of BEE on tender procedures within the Ministry. Recommendations based on the findings are provided in the following chapter.



# **CHAPTER 7: CONCLUSION AND RECOMMENDATIONS**

## **7.1 INTRODUCTION**

The goal of this study was to determine the impact of Black Economic Empowerment (BEE) on the tendering policies and procedures in the Ministry of Public Works-KZN. The study set out to identify the problems with the implementation of BEE within the Ministry and to gain insight into how BEE policies are structured and implemented within the Ministry.

This concluding chapter provides a summary of the research findings and presents recommendations drawn from these findings. This is done with a view to improving BEE practices in tender policies and procedures in the Department of Public Works in KwaZulu-Natal.

## **7.2 SUMMARY OF FINDINGS**

The study established that most of the contractors who participated in this study are new, having been in operation for less than 3 years. It was further established that 96% of contractors operate as close corporations. All of the respondents indicated that their companies were classified as previously disadvantaged. A little less than three-quarters of the respondents (70%) indicated that their primary source of information with regard to tender invitations is the newspaper. In most cases, the level of education of contractors is minimal (Matriculation certificate) and they normally appoint a qualified foreman to run the entire project on site. It is also clear from the findings that due to minimal education, the use of the English language presents a barrier in filling in tender documents.

Most of the respondents (83.3%) disagreed that the department publishes information in all official languages, while 75% believe that the use of the English language in the tender process has a negative impact on their success rate, as it excludes people who are not familiar with English.

An overwhelming number, (96.7%) of respondents, agree that the Department does not give reasons as to why a tender was not successful. This clearly indicates that the Department has

violated the provisions stipulated in a number of laws. In particular, this violates Section 32 of the Constitution, which states that: “Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.” The main objective of the Promotion of Access to Information Act (PAIA) of 2000 was to get rid of a “secretive and unresponsive culture” that dominated the public and private sector prior to democracy, which resulted in the misuse of power and human rights violations (Promotion of Access to Information Act of 2000). Almost 60% of the respondents claimed that the Department’s selection process does not give first preference to SMMEs owned by Blacks as is required by Broad-Based Black Economic Empowerment. It is, therefore, clear that there are large grey areas between ethical and unethical practice within the Department.

About sixty eighty percent of the respondents have reason to believe that the Department does not give first preference to SMMEs owned by Black people because they lack experience, money to start their projects, and lastly because they have a low Construction Industry Development Board Grade (CIDB) grade (1 and 2). Section 2 of the Broad-Based Black Economic Empowerment Act of 2003 sets out the objectives of this Act. The last objective provided is the promotion of access to finance for BEE facilitation. Preferential procurement as a tool of BEE was developed to assist Black companies to get off the ground and have a fair chance to compete in the business world. The primary objective of preferential procurement is to provide preference for Black companies in accessing contracts from the public and private sectors. It is unfortunate that the findings of this study indicate that the Department is, in fact, acting in violation of the provisions of the BBBEE Act.

The conclusion that might be drawn is that while political freedom is a reality in South Africa, wealth and economic power remain in the hands of a few. It can be further concluded that while policy and legislation are in place to turn the situation around, the translation of policy and legislation into reality remains elusive.

On a comparative scale, CIDB grading seems to be the biggest hurdle. The respondents complained bitterly about the grading. The CIDB was created to register grades and classify companies according to their works and financial capability, so as to ensure that projects are completed successfully and thus minimise the rate of project failure. The findings of this study indicate that CIDB is hampering SMMEs from participating in the economy. Classification of contractors according to grades is seen as a stumbling block to the upliftment

of small companies. This is contrary to the provisions of BEE and preferential procurement, which encourage contribution towards enterprise development.

About forty one percent of respondents were of the opinion that the major constraint to securing a tender is the ability of the business to access markets and have access to supportive institutional arrangements, such as banks to provide funding.

A quarter of the respondents indicated that they had not heard of the Department's Black Economic Empowerment, Preferential Procurement, and Corporate Social Responsibility policies. This suggests that the Department has failed to inform or educate contractors about the purpose and the objectives of these policies. Notifying the public about pertinent policies and legislation is key to safeguarding transparency and fairness in the tender process. Respondents believe that they stand a better chance (81%) when bidding as a consortium than by themselves. Amongst other suggestions made by the respondents on the role that the Department should play in capacitating SMMEs the predominant sentiment was that established companies must uplift emerging companies by subcontracting to them, so that the emerging companies can secure a better CIDB grading.

More than half of the respondents (57.7%) revealed that they do not know much about BEE. This suggests that the Department is not transparent enough when it comes to public policies. Respondents were almost evenly split when they were asked if the Department complies with legislative requirements, with 51.7% stating that the Department is not in line with the legislative requirements of BBE. About 46.7% indicated that the reasons for non-compliance include high-level corruption and nepotism.

According to Soreide (2006:2) "the problem of corruption requires a broader approach, which also addresses the more sensitive issues of political corruption, involving 'connections', political pressure, predetermination of contracts, motivation behind renegotiations, rent-seeking, grabbing, quid pro quos, signature bonuses, or whatever the different mechanisms are called". The author adds that procurement-related challenges are not seen as the consequence of institutional defaults in the responsible bureaucracies, but are depicted as an opportunity to manipulate tenders from the perspectives of companies as well as politicians and high-ranking civil servants.

South African Communist Party Secretary-General, Blade Nzimande has pointed that:

there are thieves with ties who look respectable but are stealing other people's money. The public should be given a chance to comment about the businesses and know who they are. The public should also be told on what merits did the business receive the tender (Mkhize, 2010).

If competitors pay bribes and officials receive bribes, other businesses not only lose a fair opportunity to be awarded a tender; they lose a lot of money and time in preparation for submitting a tender document, as well as self-confidence and an interest in tendering in the future. Many companies are aware that tender procedures are flawed. Respondents in this study felt that the levels of corruption in the Department are high, but they choose not to report this for fear of being victimised when contracts come up in the future.

Nine out of every ten (90%) respondents rated the effect of scorecards on tendering as being high. Seventy five percent reported that payment is made between 1 to 2 months of the tender being successful. The waiting period before payments are processed is too long, considering the fact that SMMEs are not financially stable and that for the project to be successfully executed, the contractor must have enough cash for contingencies. Sixty percent of the respondents were not sure how long payment takes. This shows a gap in the Department's information dissemination procedure. More than half of the respondents (53.6%) indicated that the impact of BEE in tendering is to give opportunities to those who were previously disadvantaged. More than three-quarters (76.7%) felt that the Department is not providing enough support to SMMEs. This is a clear indication that the Department is failing to comply with the prescriptions of BEE. Jack and Harris (2007:168) outline the objectives of scorecards, which are to help Black enterprises achieve independent operational and financial capacity.

Three-quarters of the staff members who responded to the questionnaire were Administration Clerks (75%) and the remaining quarter (25%) were Assistant Managers. All of the respondents agreed that BEE and Preferential Procurement policies were in place, with 14.3% disagreeing regarding a Corporate Social Responsibility policy. It is surprising that some respondents are of the opinion that the Department does not have a Corporate Social Responsibility policy. This policy is important in advancing the interests of society. As Van

den Ende remarks: “The crux of social responsibility is that the organisation should in every respect be a good corporate citizen, talk about business ethics, corporate accountability and sustainability, one that respect the right of employees and consumers and assist the disadvantage” (Van Den Ende, 2004:2).

All of the respondents indicated that the Department is using the preferential procurement policy as a BEE tool. Fifty seven percent said that the Department does not have review mechanisms for the BEE policy and the Preferential Procurement policy, while 67.7% stated that there is also no review mechanism for the Corporate Social Responsibility policy. One respondent indicated that reviews are performed by Head Office. It is clear that the Department does not review its policies. By so doing it puts the achievement of its objectives at risk. It is very important to review policies annually to ensure that everyone understands processes and procedures, what is expected of them and to ensure effective communication, which normally leads to the expected outcome. No one can guarantee that their process and procedure is perfect. Policy review helps with the identification of gaps, achievements and challenges.

Approximately 20% of the respondents indicated that from the strategic point of view BEE, Preferential Procurement and Corporate Social Responsibility policies are addressed and regulated during annual strategic planning, when senior management discuss strategies for the coming year and the resolutions are taken and implemented. About 20% of the respondents revealed that the Department uses the KwaZulu-Natal Supply Chain Management Policy Framework to address policy issues. Finally, 60% of respondents stated that the Department has to enforce and comply with Treasury regulations regarding supply chain management.

The findings indicate that sixty percent (60%) of the funds, which amounted to R90 million, was allocated to businesses owned by Black women. Approximately (80%) of funds, which amounted to R 77 million, was spent with Black-owned enterprises while 80%, which amounted to R40 million, was spent on Black empowerment enterprises. Finally, 87.5% of procurement funds were spent on long-term contracts of 2 years and more. The claim that R40 million was spent on Black empowerment businesses is questionable because the findings have revealed that small businesses are battling to secure tenders due to their low CIDB grading. If staff members confirm that R40 million has been used for small businesses, one

could conclude that only few SMMEs are benefiting, which may be because they are paying bribes, as it has been indicated that the corruption is rife in the Department.

From the analysis, a conclusion can be drawn that the Department planned to use the preferential procurement system as a tool to meet BEE objectives, but that this has not occurred. This could be because of the following reasons:

- The Department has BEE processes and procedures in place, but these have not been implemented; or
- There is no link between the policy and what has been implemented.

There are no guarantees that if you implement a policy it will achieve positive results. It is clear that the Department had no set target to be achieved; an annual review of the policy has not been conducted; staff members and service providers confirm that corruption is rife within the Department; and tenders are awarded to contractors who pay bribes/kickbacks. It is difficult to trace the impact of BEE or any other policy if it is not being implemented.

## **7.3 RECOMMENDATIONS**

The following recommendations are aimed at improving BEE practices in tendering policies and procedures in the Department of Public Works-KZN.

### **7.3.1 User-friendly language**

BBBEE refers to the economic empowerment of all Black people, including those living in rural areas. Many of these people cannot speak or understand English, yet all the tender documents are issued in English. The language barrier for emerging contractors becomes even more difficult given the sophisticated terminology, legal vocabulary, and complicated numbering used in tender documents. It is, therefore, recommended that the Department provide tender briefings and issue tender documents in a language that HDIs are familiar with in order to free them from linguistic domination and discrimination. This will help to meet the empowerment objectives of the BBBEE and ensure respect for African languages that are commonly utilised by South African communities.

### **7.3.2 Provision of reasons to unsuccessful bidders**

In general, if there has been a properly conducted tendering process, where adjudication is on the basis of the most economically advantageous tender, it is good practice to debrief unsuccessful bidders. It is, therefore, recommended that unsuccessful bidders be given reasons containing the strengths and weaknesses of their bid. This feedback will help both the Department and unsuccessful bidders:

- It will help the Department to adopt a culture of fairness and openness and ,thus, result in improved bids in the future and promote fair competition; and
- For the bidders it can assist them to operate differently and perform better in the future and, thus, generate confidence in the tendering processes and procedures of the Department.

### **7.3.3 Preference for SMMEs owned by Black people**

The Department is part of the provincial government and the biggest buyer of goods and services within the province. It is obliged to promote Broad-Based Black Economic Empowerment through preferential procurement. It is recommended that the Department's procurement should focus more on the empowerment of Black businesses. This will ensure compliance with the primary purpose of preferential procurement, which is to provide Black business with preferential access to supply contracts from both the public and private sectors that were previously tightly guarded (Jack and Harris, 2007:151).

### **7.3.4 Promotion of access to finance / Supportive institutional arrangements**

About Sixty eight percent of respondents said that preference is not given to Black companies because they do not have financial capacity to run the projects. When implementing BEE strategies, it is important to take into consideration the objective of the scorecards, which is to help Black enterprises achieve independent operational and financial capacity. It is advisable for the Department to consider the Annexure 600A Benefits-Factor Matrix as provided by the code series 600: Measurement of Enterprise Development elements of BBBEE, which provides a list of recognisable enterprise development contributions. In this, case preferential credit limit and favourable terms are recommended. These include the following:

- Providing preferential credit facilities;
- Providing finance to Black-owned or empowerment enterprises at rates below the rate they would otherwise get from credible and duly registered financial institutions; and
- Providing finance at a favourable terms such as:
  - Over an extended period beyond that which would be provided by an independent financial institution; with
  - Relaxed security or no form of security required upfront to cover the potential default of the finance provided (Jack, 2007:180).

### **7.3.5 SMME support**

More than three-quarters (76.7%) of the respondents feel that the Ministry is not providing enough support for SMMEs. CIDB grading seems to be the biggest hurdle when it comes to small contractors securing tenders. The establishment of classification and a contractors' register has placed additional restrictions on the industry. Because of CIDB classification not everybody is benefiting from the fruits of BEE. The rich become richer and the poor become poorer. It is therefore recommended that the Department of Public Works-KZN, when appointing an established contractor, be compelled to use emerging contractors as sub-contractors for that project.

Using emerging contractors as subcontractors will help newcomers to grow to a better grade and also help the Department to meet the objectives of BEE by providing the beneficiaries with access to the mainstream economy. The Department also needs to revisit and restructure its procurement strategy in order to support integrated supply chain management to achieve the strategic objectives of socio-economic development for all and higher rates of economic growth. The Department needs to create a recognition system for contractors who perform well, encourage business-to-business linkages, and use preferential procurement rather than the CIDB classification to select contractors in order to assist Black-owned enterprises to enter into the market and allow them an opportunity to grow.

The Department should encourage consortiums or joint ventures, with a view to mentorship and capacity development and brief the beneficiaries of their advantages and disadvantages. Break-out procurement is recommended for the Department of Public Works. Break-out



procurement is when a large project, which was supposed to be awarded to an emerging contractor, is divided into small, different projects to create opportunities for a number of SMMEs which would not have been able to bid successfully due to their low CIDB grade and lack of financial resources. The procurement policy of the Department should offer labour intensive contracts for contractors that form joint ventures with HDIs.

### **7.3.6 Compliance**

About 46.7% of contractors indicated that the reasons for non-compliance within the Department includes, amongst other things, high-level corruption and nepotism. Surprisingly, 75% of the staff members who responded did not know whether the Department has received a non-compliance directive. As a public entity, the Department of Public Works is expected to apply the Codes as provided in terms of Section 10 of the BBBEE Act.

Corruption in the public sector is unacceptable because of a number of reasons which include, amongst other things:

- Only a few benefit from the wealth of the country at the expense of society as a whole, while the poor suffer the consequences;
- It minimises the usefulness of public administration as well as the expenditure of public funds;
- The community lacks trust in the institution.

It is recommended that the Department reiterate the purpose of the Code of Good Conduct for the public service. The Department must also remind its officials about the provision made in Section 195(1)(a) of the Constitution which states that "a high standard of professional ethics must be promoted and maintained" in public administration generally. Section 20(t) of the Public Service Act, requires all public employees appointed under this Act to abide by everything that is stipulated by the Code of Conduct, which also outlines corrective and disciplinary action. The Department must thoroughly investigate its tender processes and procedures to enable it to track questionable expenditure and encourage people to talk freely to improve effectiveness, transparency and accountability. The Department must make an example of those officials who involve themselves in unethical conduct, which compromises the effective implementation of BEE.

### **7.3.7 Targets and formal review of the policy**

More than 50% of the respondents indicated that the Department does not have review mechanism for both the BEE and Preferential Procurement policies. Nearly 60% of the respondents indicated that the Ministry was satisfied, as it was achieving goals and targets, such as infrastructure, hospitals and schools. Sadly the targets revealed by the respondents are infrastructure targets, not BEE targets. BEE targets refer to the effective use of a tendering system to guarantee that a bigger proportion of the allocated procurement budget is awarded to HDIs.

It is, therefore, advisable that the Department set specific goals, which set out the number of SMMEs owned by HDIs that must benefit from projects in that financial year to ensure that equity is held by previously-disadvantaged individuals as per BEE prescriptions. The Department must grant rewards and penalties to staff members to achieve the set targets. Achievement of these targets must be linked to the employment contracts of senior managers. This will ensure that more focus is given to the achievement of targets instead of making assumptions. It will also reduce the high level of corruption within the Department. Finally, it is important for the Department to review implementation annually. The review will reveal whether BEE has a positive or negative impact in the Department and what needs to be rectified to ensure positive results.

### **7.3.8 Payment of contractors**

Seventy five percent of respondents stated that payment is made between 1 to 2 months. This is too long a waiting period for emerging contractors. It is, therefore, recommended that the Department pay within 15 days of the submission of an invoice so that small contractors can cope with overheads. According to the National Treasury Instruction note on enhancing compliance monitoring and improving transparency and accountability in Supply Chain Management, “Treasury Regulation 8.2.3 provides that unless otherwise determined in the contract or other agreement, all payments overdue to creditors must be settled with 30 days from receipt of an invoice if goods, works or services were delivered to the satisfaction of the accounting officer”. The note adds that the Treasury Regulation further states that violation of this may be reported to the Auditor General as part of its audit function.

## 7.4 CONCLUSION

The main objective of this study was to determine the impact of BEE on the tendering processes and procedures within the Ministry of Public Works and also to examine and analyse the tendering process used by the Ministry. It has been established that the Department has a Black Economic Empowerment and Preferential Procurement Policy in place. While the policies exist, they are not being implemented properly by the Department. The findings of this study reveal, amongst other things, poor implementation of preferential procurement as a tool to meet BEE objectives in the sense that:

- projects are continually awarded to the same contractors;
- unethical practices exist within the Department, including a high level of corruption and nepotism. This was confirmed by staff members and contractors. Corruption and nepotism has caused SMMEs to lose confidence in the tendering system of the Department;
- preference is not given to previously-disadvantaged individuals;
- there are no set targets and no clear objectives to meet the objectives of BEE;
- these policies are not reviewed;
- there are no support mechanisms in place for SMMEs; and
- reasons are not given to unsuccessful bidders.

In conclusion, and in line with the objectives of this study, it has been established that while BEE is meant to address the economic imbalances of the past by promoting business enterprises owned by previously-disadvantaged people, this goal has not been fully realised. This is largely because the tendering procedures and processes used by the Department are not in line with policy, nor are they sufficiently transparent, particularly to those who are not conversant with English language.

In this regard, it can be concluded that the implementation process is not entirely supportive of BEE since the language used excludes those whom the programme is meant to assist. This study points to the fact that good policy intentions do not always yield the desired results. It recommends that policy-making processes should be mindful of public administration processes that are in line with openness and transparency. This study has provided

recommendations on how this can be done for the effective implementation of Black Economic Empowerment.

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