BLACK ECONOMIC EMPOWERMENT OFFICE

Introduction

Empowerment of the historically disadvantaged individuals is not only political, as some would argue, but is a constitutional obligation of the state. Section 217 of the Constitution (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.

Since the advent of the new democracy, Blacks have made little progress in achieving greater participation in and control of the economy. The previous government’s system denied the majority of the country’s citizens the ability and opportunity to play a constructive and meaningful role in South African companies. The legacy of apartheid and deliberate disempowerment of Blacks provide a moral and political basis for a strategy and programmes to accelerate empowerment of the previously disadvantaged. The importance of Affirmative Procurement is a new concept in our democracy and the objectives have been set and it is a learning process.

Part of the national government’s programme to bring about social equity is the successful implementation of the programme for Black Economic Empowerment. The President of the Republic, Mr. Mbeki opined that “we need 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”. He also indicated that legislation on Black Economic Empowerment would be enacted during this financial year. We believe that this is a step in the right direction, as only legislation will ensure complicity since there is usually a lack of punitive
measures that bind companies to attain prescribed empowerment targets. Breach should attract a penalty. The department concurs with the view of the Black Economic Empowerment Commission that it is now necessary to make our policies on black economic empowerment more explicit. Our programmes should aim to significantly increase black economic empowerment in the province.

As the government is the biggest single procurer of goods and services, it can play a meaningful role through its procurement activities to redress the imbalances of the past. Our plan should seek to go beyond redressing the past imbalances. Laws and a set of regulations governing national government departments, municipalities, provincial governments and parastatals regulate who gets government contracts. The Minister of Finance, Mr. Trevor Manuel, said in his budget speech, that “a particular challenge ahead is the broadening of economic participation and that Black economic empowerment has a central role in sustaining South Africa's growth trajectory and improving the distribution of income and opportunities”. We have seen the enactment of Preferential Procurement Policy framework Act 5 of 2000 which provides a framework for the implementation of the procurement policy as contemplated in section 217(3) of the Constitution. Further, KwaZulu-Natal has its own procurement legislation, i.e. KwaZulu-Natal Procurement Act 3 of 2001, which is fully compliant with the aims and objectives the national PPFMA. The biggest challenge for the government is the lack of tools to monitor the effectiveness of its empowerment policies.

The new procurement provisions are favourable to small businesses, although there are still some implementation hiccups. There still remains a need to create an environment in which small businesses can flourish. For instance, access to contract opportunities has been widely promoted by most public sector agencies, including this department, but the sustainability of small contractors is jeopardized by a number of issues e.g. lack of after care support, etc. This may be attributed to the fact that the government's small business promotion policy has not been without problems either, for instance, tender advice offices have been focusing on micro and survivalist businesses while not being able to provide services appropriate to the small and medium enterprise market. Effective small business development also requires government to create an environment that encourages investment in the SMME sector.

Definitions

HDI’s:

An Historically Disadvantaged Individual 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”

PPG:

A Priority Population Group is defined as meaning: Historically disadvantaged Individuals who fall into population groups that were not offered franchise in national elections before or after the introduction of the 1984 tri-cameral parliamentary system and only received their franchise during 1994.

BEE:

We need to struck a balance between a very broad definition and an overly narrow one when defining BEE. To define BEE too broadly equates BEE with economic development and transformation in general. On the other hand to define BEE too narrowly limits it to a set of transactions transferring corporate assets from white to black ownership.

Accordingly, government defines BEE 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 numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities.

Thus BEE process will include elements of human resource development, employment equity, enterprise development, preferential procurement, as well as investment, ownership and control of enterprises and economic assets.

The KZN-Department of Health was not immuned either, and has inherited an outmoded procurement system that is inadequate to address its vision for change. It has thus established an office to deal specifically with the question of Black Economic Empowerment, Historically Disadvantaged Individuals and SMMEs in its procurement activities. This is in line with the Provincial Procurement Act 3 of 2001, which was enacted to, inter alia, establish a system for the procurement of goods and services; give effect to the Preferential Procurement Policy Act and to create and sustain conditions for the empowerment of small, medium and micro enterprises. The department’s commitment to the vision and principles of redressing the imbalances of the past is unwavering, hence the establishment of this office. This office will equip the department with the instruments to drive implementation to achieve its noble objectives. It marks a pivotal milestone in the process to take forward the vision of the department and crystalises significant effort by the department to translate the spirit and intent of the legislation into concrete action.
This Office is responsible for, *inter alia*,: 

- Planning, developing and implementing procurement policies and guidelines on BEE at all times, of course, adhering to Public Finance Management Act 1 of 1999;
- Analysing and evaluating SMME’s tender documents and make appropriate recommendations;
- Monitor the award of tenders to ensure the promotion of SMME’s and HDI’s;
- Reviewing the performance of successful tenders against agreed upon norms and standards;
- Maintaining a BEE management information system and implement an appropriate procurement procedure to develop and implement protocols to advance HDI’s.

It is incumbent upon this office to see to it that BEE and SMME development is part of the national industrial policy of the national government. This office is of the view that economic growth, development and black economic empowerment are complementary and related processes. The empowerment we speak of is an inclusive process and not an exclusive one. Policies to fast track the integration of Blacks into the economy are indeed a welcome intervention.