

Public procurement bill comments : NCOP Public Participation held in Mthatha on 01/03/2024.

Submission Due date: 08 March 2024

Submission to : msimuku@ecleg.gov.za

Author : Monwabisi Rwexu (730127 5494 081), Professional Quantity Surveyor, Fellow Arbitrator of Arbitration of Southern Africa, Former Deputy President of SABTACO and a member of Black Business Council in the Built Environment.

I start by asking the following questions:

1. Does South Africa need active black economic empowerment after years of democracy and peaceful political transformation?
2. What is the state of the nation with regards to wealth versus population?
3. What is the percentage of people living under poverty line?
4. What is the unemployment rate in SA and why?
5. Why are our students who are in the construction industry failing to connect with the market?

Many questions would be asked, but the simple answer is a nation that is not economically transformed. Its inequality measured by gini-coefficient is 0.7, where 1 is the most unequal country.

This Public Sector Procurement Bill must address **TRANSFORMATION** and must ensure regulations that are building the nation towards an equal society. Policy makers must make policies that would ensure the TRANSFORMATION as an outcome in short term and in the long term. All actors in the society, be it Government, politicians, bureaucrats, various forums, NGO's, Justice, etc. must ensure implementation of TRANSFORMATION policies in both public and private sector, if we are to see the light of nation building.

THE CONSTITUTION

Section 217 (2) of the constitution, which state that "*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.”

Over years government has been emphasizing a procurement that is fair, transparent, equitable, competitive and cost-effectiveness. Little emphasis on Section 217 (2) above.

The bill must define equitable as substantive equality versus formal equality. Wherein substantive equality should be defined as a fundamental aspect of human rights law that is concerned with equitable outcomes and equal opportunities for disadvantaged and marginalized people and groups in a society.

The International Labour Organization (ILO) in its #Goal 8, of ‘The 2030 Development Agenda’, put it clearly that it seeks to “Promote inclusive and sustainable economic growth, employment and decent work for all”. South Africa should be at the forefront in ensuring promotion of social justice for all and human rights. It is a human right that the injustices of the past must be addressed, as stated in Section 217 (2) of the Constitution.

The bill must therefore ensure that 80% of the total procurement budget of the state organs is set aside to address protection of persons disadvantaged by unfair discrimination ((S217 (3)). The Bill must level the playing fields primarily. The Bill and its regulations thereof must ensure that 51% black owned companies get preference. **Resultantly, this procurement bill has been passed by Parliament in December 2023, and we support the set asides, 110%.**

Our Comments however are as follows:

- 1. Transformation definition : A process that encompasses social and an economic revolution intended to heal the divisions of the past.**
- 2. Value for money must be defined to include social and economic redress to the injustices of the past South Africa, therefore value for money must include socioeconomic objectives. Definition : A value derived from every purchase or money spent by the purchaser when considering the best economic and social aspects while achieving maximum effective and efficient use of the purchase.**

3. Tender evaluation scoring

When calculating the tender evaluation scoring on allocation of contracts the weighting on preference must be more than the weighting of Price and Quality combined.

Chapter 4 – Preferential procurement

Chapter 4 under preferential procurement need to be reviewed and consider (1) Categories of Preference and (2) Targeted procurement.

The categories of preference must defined as indicated in Section 217 (2) of the constitution.

For Targeted procurement the state organ must set aside 80% of the total procurement budget towards the targeted group as envisaged by Section 217 (2) of the constitution through this bill.

A database system and a roster allocation of work should be considers once the database of targeted suppliers have been created.

Construction Contracts

The National Treasury must consider developing construction contracts that are state owned and align them with the objectives of this bill.

Public Procurement Partnership (PPP)

Public Procurement Partnership (PPP) must be subjected to the terms of the Act in terms of Section 217 (2) of the Constitution.

Conclusion

As long as there is inequality in South Africa, we need active black economic empowerment. If we fail to address that as legislators, policy makers, there will be no nation building instead the country will go backwards.