

Time to scrap BEE regulations and implement regulations based on competence and contribution to Sustainable Development Goals

By Jan de Villiers MP – DA Shadow Minister of Small Business Development

Chairperson, the State spends close to R1 trillion a year on public procurement, which is the acquisition of different goods and services that government needs to fulfill its various functions. This is of course a crucial part of government services and procurement guidelines by National Treasury are supposed to be designed to support economic growth and assist in transformation.

In February of this year, Afribusiness won its Constitutional Court challenge of section 3 of the 2017 Preferential Procurement Policy Framework Act, basically the current BEE guidelines for State tenders. After a few months of general confusion, it seems the current position supported by National Treasury is that current BEE tender regulations will remain in place until it has received “clarity” from the Constitutional Court on the way forward. So in short, the current position is that National Treasury is still enforcing tender guidelines that have been found unconstitutional by a majority finding of the Constitutional Court. These 2017 BEE regulations have no foundation in law and breaches the principle of legality, so it goes without saying that this brings major risk to tenders currently awarded by these guidelines that have clearly been found unconstitutional, and we urge National Treasury to get their “clarity” sooner than later.

But, let’s be frank, more “clarity” on tender rules that follow BEE guidelines does not address the fundamental problem of the State’s procurement policy and its ability to grow the economy and assist in transformation. The current system of BEE, coupled with the deployed cadres who run the system, has been the main enabler of statewide corruption and capture. It is sold to us as a system that aims to do “broad based empowerment”, but it is practically implemented to enrich an already powerful and politically connected black elite, who make sure the cadres who run the procurement processes share in the proceeds of the tenders awarded using the current BEE rules. Current BEE regulations award tenders based on the narrow criteria of race and ignores the many economic, environmental, and social contributions that the private sector can and do make. It goes without saying that this scares off investors, both local and international.

If government really wants to help the economy grow, create employment and fight poverty, BEE ought to be stopped in its entirety, as almost 30 years of BEE policy have done nothing to redress imbalances of the past and just caused more inequality, higher unemployment and worse poverty.

The good news is, there is a solution and a feasible alternative to BEE. As mentioned, the State and National Treasury can transform our society and create more broad, equal and fair economic growth through the way in which it procures its R1 trillion a year in services and goods.

The DA supports the total scrapping of BEE regulations in a favor of procurement practices that reward private companies who compete on the ability to deliver and those that make the most positive socio-economic impact, as measured by the United Nations Sustainable Development Goals, or SDGs. These SDGs include fighting poverty and hunger, and promoting good health and well-being, quality education, gender equality, decent work and economic growth, and many other sustainable goals that offer a framework for companies to help redress society in an area they are best fit to address. This is the only way the State can encourage inclusive growth, as we need government and private sector to take hands and partner on the achievement of the UN’s SDGs.

Chairperson, the DA supports the transformation of State procurement policies that allow private companies to compete on competence and contribution to the UN's SDGs. Let's scrap these apartheid style race-based policies of BEE and reward private companies for being competent and socio-economically responsible in their industries.

The DA supports the promotion of the State doing business with companies that firstly have the ability to competently deliver on products and services, offering tax payers bang for their buck, but secondly, companies that actively promote sustainability goals and work towards creating a more equal and fair South Africa.