

1 March 2013

Department of Trade and Industry
Private Bag X84
Pretoria
0002

BY EMAIL: ahermans@parliament.gov.za

Attention: A Hermans

Dear Sir,

**RE: COMMENTARY ON THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT BILL
PUBLISHED IN GOVERNMENT GAZETTE DATED 23 NOVEMBER 2012**

Oceana Group Limited ("Oceana ") welcomed the invitation to submit further comment on the Broad-Based Black Economic Empowerment (B-BBEE) Bill. It is of considerable importance to the South African fishing industry that a clear policy regarding the measurement of transformation is adopted to govern all sectors and to eliminate conflicting interpretations that have been applied.

Oceana believes that the B-BBEE Act and Codes were promulgated to provide certainty to the country and the economy regarding the measure to be applied to measure broad-based transformation. Oceana has implemented a broad-based approach to implementing transformation within the group and has done so since 2004. This approach has led to Oceana being rated independently as a black owned and controlled (55.9%) Level 2 B-BBEE contributor with a score of 93.98 out of 100 points, with a recognition rating of 125% for procurement in terms of the DTI B-BBEE Scorecard.

During 2011 Oceana was selected as a finalist in the 2011 Metropolitan Awards for outstanding achievement as a top empowered company in its sector and for outstanding contribution to the growth and sustainability of the South African economy. During 2012 Oceana was ranked 4th on the Financial Mail's list of Top JSE listed companies.

Oceana hereby makes the following comments in relation to the B-BBEE Bill:



1. Section 10 (1)

Every organ of state and public entity must take into account as far as is reasonably possible, and apply any relevant code of good practice issued in terms of this Act in

Comments

- (a) The word “must” must be substituted with the word “shall “
- (b) The words “as far as is reasonably possible” must be deleted.

2. Section 13A

Any contract or authorisation awarded on account of false information furnished by or on behalf of an enterprise in respect of its broad-based black economic empowerment status may be cancelled by the organ of state or public entity without prejudice to any other remedies that the organ of state or public entity may have.

Comments

The words “Any contract or authorisation awarded on account of false information furnished by or on behalf of an enterprise in respect of its broad-based black economic empowerment status may be cancelled by the organ of state or public entity without prejudice to any other remedies that the organ of state or public entity may have” must be deleted and substituted with the following words:

- (1) If an enterprise that’s been awarded a contract or authorisation by the organ of state or public entity—
 - (a) has furnished information or has submitted any other information in respect of its broad –based economic empowerment status which is not true or correct;
the organ of state or public entity may by written notice delivered to such an enterprise or sent by registered post to the said enterprise last known address, request the enterprise to show cause in writing, within a period of 21 days from the date of the notice, why the contract or authorisation should not be revoked, suspended, cancelled, altered or reduced, as the case may be.
- (2) After expiry of the period referred to in subsection (1) the organ of state or public entity may—
 - (a) *cancel or revoke or alter the contract or authorisation*
 - (b) suspend the authorisation for a determined period;
 - (c) alter the terms or conditions of the contract or authorization; or



- (e) decide not to revoke, suspend, cancel or alter the contract or authorisation.

3. Section 13F (1) (c) ... to receive complaints relating to broad-based black economic empowerment in accordance with the provisions of this Act

Comments

The words “from interested or affected parties” must be inserted after the word complaints

4. Section 13F (1) (d) to investigate, either of its own initiative or in response to complaints received, any matter concerning broad-based black economic empowerment

Comments

The words “either of its own initiative or” must be deleted

5. Section 13J (2) the format and the procedure to be followed in conducting any investigation must be determined by the Commission with due regard to the circumstances of each case, and may include the holding of a formal hearing

Comments

The words “with due regard to the circumstances of each case, and may include the holding of a formal hearing” must be deleted and substituted with the following words “in accordance with the provisions of the Promotion of Administrative Justice Act 2003”

6. Section 13J (3) without limiting the powers of the Commission, the commission may make a finding as to whether any B-BBEE initiative involves a fronting practice

Comments

The words “may make a finding” must be deleted and substituted with the following words “where there is a prima facie case of fronting, the Commission shall make a finding”

7. In section 13(B) (1) the Commission is established as trading entity within the administration of the Department.



Comments

The wording trading entity is not defined in the Act and therefore:

- (a) It is not clear whether the Commission is an administrative or quasi judicial entity.
- (b) It is therefore important that the status of the Commission be defined
- (c) It is also important that the independence and impartiality of the Commission be maintained.

Yours faithfully

OCEANA GROUP LIMITED



LEA CONRAD
DIRECTOR: GROUP STRATEGIC SERVICES

