1. Introduction

The South African Government has embarked upon a reform process on the public sector procurement system, which was released in November 1995, bringing about a ten-point plan. Whereby the plan included the improvement of access to tendering information; the development of tendering advice centre; broadening of a participation base for small contracts; the waiving of security requirement on certain construction contracts; the unbundling of large projects into smaller projects; the promotion of early payment cycles by government; the development of preference system for small, medium and micro enterprises (SMMEs) owned by historically disadvantaged individuals (HDIs); the simplification of tender submission requirements; the appointment of procurement ombudsman; and the classification of building and engineering contracts (Bolton, 2003: 626). In April 1997, a Green Paper on Public Sector Procurement, 1997 was released that contained all the principles of the ten-point plan and extended to include a proposal for the drafting of an Affirmative Procurement Policy (Green Paper on Public Sector Procurement, 1997). The essential ingredients of an Affirmative Procurement Policy are the use of the targeted procurement to achieve socio-economic objectives. Addressing socio-economic issues is invariably corresponding with direct social policy objectives such as to foster job creation, to promote fair labour conditions, to promote the use of local labour. The purpose of these objectives is to prevent discrimination against the minority groups, to protect the environment, to encourage quality opportunity between men and women, and finally, the promotion of an increased utilization of the disabled in employment (Bolton 2003: 621).

In February 2000, the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) was promulgated to include an enhanced participation of historically disadvantaged individuals (HDIs) and small micro and medium enterprises (SMMEs) in the public sector procurement system [Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)]. Later following that year in August 2001, the Preferential Procurement Regulations were promulgated to provide substance to the provisions of the Procurement Act (Preferential
Procurement Regulations, 2001). The above provision measures were undertaken to address the legacies of black economic disempowerment under the apartheid era. In the past, discrimination, unfair practices, and marginalisation of people have led to exclusion of people from the mainstream of the economy and participation in the public sector procurement system. Bolton (2003: 620), argued that in the past public procurement system favoured large and well-established business and it was very difficult for newly established business to enter the system. These encapsulates the reasons of why the government in the post-apartheid era has advocated an excessive form of reforms as a mechanism of redressing the imbalances of the past and offer the previously disempowered people the economic privileges of this country.

This article is an attempt to build upon the findings of other authors with regard to the difficulties encountered in the implementation of the preferential procurement policy, and also to illuminate the relationship of the preferential procurement policy with the provision of low-cost housing. This is achieved by turning the reader’s to several issues: the framework that is applied in the implementation of the preferential procurement policy in South Africa, the objectives of this policy; its practical usage within the Provincial Departments of Local Government and Housing, the principles that underlie it, and the factors that affect its implementation.

2. Framework of the procurement policy

Section 38 (a)(iii) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) stipulates that an Accounting Officer for a Department, Trading Entity or Constitutional Institution must ensure that the Institution has and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

Thus in South Africa, the implementation of the procurement policy is conducted in accordance with the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), which stipulates that any organ of state must determine preferential procurement policy for itself and must implement it within the parameters of its provisions. The archetypical framework of the preferential procurement policy postulates a preferential point system. Points are to be administered as follows: for contracts below the value of R 500 000, a formula of 80/20 must be applied; while the formula of 90/10 is to be followed for contracts over R 1 million in value.
Section 217(1) of the Constitution of Republic of South Africa, 1996 stipulates that, when an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislature, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective (Constitution of Republic of South Africa, 1996). In addition, Section 217(2) of the Constitution of South Africa, 1996 specifies that, when implementing the procurement policy, the following must be considered; categories of preference in the allocation of contracts; and the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination (Constitution of Republic of South Africa, 1996). The framework of the procurement policy encompasses objectives which are profiled in detail below.

3. Objectives of the procurement policy

Before it is possible to ascertain whether or not the procurement policy is achieving the objectives laid out for it, it is necessary to profile these objectives. All the while it must be borne in mind that, in this context, the procurement policy is specifically considered in terms of its usage as a policy tool in the delivery of low-cost housing. It is therefore, once again apparent that any misstep in the implementation of the procurement policy must be assumed to have negative consequence for the low-cost housing programme. The objectives of the procurement policy fall under two categories. The primary objective is that the procurement process be fair, equitable, transparent, competitive and cost effective, whilst its secondary objective is that, in the allocation of contracts, persons previously disadvantaged by unfair discrimination are awarded preference and protection, that they may be enabled to reverse the impoverishment brought down on them by past injustices (Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)).

The Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) eloquently stipulates that an organ of state must determine its preferential procurement policy and implement it in accordance with the preference point system and Section 217 (1) of the Constitution of the Republic of South Africa. The various South African organs of state have
each determined a procurement policy suited to their particular circumstances. In some provincial governments of South Africa, the preferential procurement policy is conducted in a different manner. Here, the awarding of a contract is not the result of competitive bidding. In Limpopo Province, for example, the principle of competitive bidding (specifically with regard to contracts relating to the provision of low-cost housing) does not come into play at all. This is due to the fact that, in Limpopo the price of the unit to be constructed is pre-determined. Therefore, contractors are selected on the basis of the proposals they submit for specific advertised construction projects.

4. The implementation of the procurement policy

Once the various South African Provincial Departments of Local Government and Housing have each determined their own preferential procurement policy, the procurement process can commence. Certain attributes of the various companies contending for a tender are deemed particularly important in the selection phase and are thus used as the selection criteria by which to evaluate these prospective contractors. These criteria evaluate contenders in terms of their: directorship (points are awarded for young, female, disabled and/or equity-holding directors), experience (the requirement is a minimum of three years) and delivery capacity, company registration certificate, VAT Registration and Valid Tax Clearance (Limpopo Department of Local Government and Housing 2009:5). In practise, these criteria are grossly overly simplified and, thus, susceptible to difficulties and even corrupt practices coming into play during the implementation of this policy. Errors made as a result of these difficulties then naturally spread to the low-cost housing programme, exacerbating the backlog.

The President’s Coordinating Council (PCC) reported that the current housing backlog is estimated to be 2.1 million housing units affecting 12 million people (ThePresidency, 2010). It is thus contested in this article that the procurement policy further contributes significantly to the existing housing backlog. Therefore, the critical pillar of this contention is to explore and find practical solutions to the devastating housing backlog facing the South African Government.
These problems occur largely because the principles underlying the procurement system—fairness, equitableness, transparency, competitiveness and cost-effectiveness—are, or appear to be, in conflict with one another (Watermeyer 2003:13). In order to clear up this confusion, it is necessary to profile each of these principles and their respective implications.

In terms of the National Housing Code proviso has been made for two (2) phases of development, which are as follows; Phase I Development, includes, land acquisition, town planning process, geotechnical investigation, environmental impact studies and service installation; Phase II Development, this include top structure construction (Dali et al., 2009:22).

Phase I of the develop is supposed to be undertaken by municipalities, but due to capacity constraints by municipalities, the departments of local government and housing have to begin with phase I, then followed by Phase II of development. This is a protracted process and slows down the speed at which low-cost housing is to be delivered, hence the housing backlog. In order to get clarity, it is important to profile each of these principles and their respective implications.

5. Implications of the principles of procurement policy

It is of great importance to discern the applicability of the principles of the procurement policy in terms of its implementation. This involves a critical analysis of the vertical and horizontal relationships that exist between the various principles. Pauw and Wolvaardt (2009:71-76) provide an analysis of the five principles of public procurement. The principle of fairness ensures that the individuals who are awarded contracts are deserving of them. It also ensures that potential suppliers in a tender process receive treatment that is just, unbiased, free of corruption. The principle of equitableness also refers, in part, to fairness. In this particular context, equitableness refers to the ‘levelling-of-the-playing-field’ when competing bodies are not equal because one has been unfairly disadvantaged in some way (for instance, through discrimination).

Transparency in practice entails the advertising of tenders, pre-disclosure, public bid opening, accessibilities of policies and regulations. It is simply about divulging all relevant procedures and regulations to the public and explaining the
criteria by which tenders will be evaluated. The principle of competitiveness allows for a sufficient number of people to bid on a particular contract, so that the contractor who is ultimately selected is truly the best contender of many. The principle of cost-effectiveness makes sure that tenders are also evaluated based on their value for money. This ensures that maximum gains are reaped from the amount of money invested in a particular contract.

In terms of the provisions of Section (2) paragraph (e) and (f) of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), contracts must be awarded in this way, unless objective criteria in addition to those contemplated in Section (2) paragraph (d) and (e) justify the award to another tender. What these additional criteria might be is, however, not clearly specified. It appears to be largely a matter of individual discretion.

Clearly, the principle of competitiveness and that of fairness, whereby preference is given to the previously disadvantaged, are coming into conflict and one must ultimately win out over the other. It falls to the individual or group entrusted to awarding the tender to weigh such conflicting principles up against one another in order to decide which is more important. This process is clearly open to abuse and error as it is very easy to award contracts to those who scored the lowest points without sufficient justification. Such ambiguities regarding the principles of the procurement system paralyse the implementation of the preferential procurement policy, and this increases instead of decreases the housing backlog of the low-cost housing programme.

In addition, the principle of transparency needs to be more sufficiently laid out. It does not provide a detailed procedure for the balanced evaluation of competing contractors. This leaves the contractors in dark as to how to prepare for evaluation. In order to solve the problems of the procurement policy, it is in essence that the factors contributing to the implementation of the procurement policy must be explored.

6. Factors affecting the implementation of the preferential procurement policy
This section deals with factors leading to difficulties in implementing the preferential procurement policy in conjunction with the low cost housing.

6.1. Lack of effective implementation strategies

In South Africa, the Provincial Departments of Local Government and Housing are mandated, within the parameters of the national housing policy, to promote and facilitate the provision of adequate housing, as well as to take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and duties in respect of housing development [Housing Act, 1997 (Act 107 of 1997)]. It is the role and responsibility of the various provincial governments to facilitate housing development within each of their respective provinces. The South African Government does not physically build houses itself; it has them built via the use of public procurement contracts. Unfortunately, virtually all of South Africa’s provincial governments fair poorly at facilitating the implementation of the preferential procurement policy within the provision of low-cost housing programme. Erguden (2001:4) suggests that the improved efficacy of provincial governments’ facilitative role is the key to harnessing the full potential of all those involved in low-cost housing production.

6.2. The absence of security vetting when selecting contractors

The security procedure followed by the Provincial Governments of South Africa for the procurement of contractors is very simple. All the contractors must register their companies on the approved departmental database (Rampedi 2008:4). The selection committee then looks up each company’s submitted proposal on their database and adjudicates based on the proposal as well as on the company in question’s procurement compliance. It is of great importance to strictly evaluate the status of companies submitting their proposals in order to prevent the awarding of contracts to artificial or physical non-existent companies. The awarding of contracts to unscrupulous contractors undermines value-for-money in the procurement system because huge construction projects are left in the hands of companies that are incapable
of executing them properly. Projects awarded to such companies are consequently often either left incomplete or are complete but are of a low quality and far exceed the stipulated time frame.

6.3. Corruption within the procurement process

Governments make considerable use of contracts to obtain goods and services from external suppliers. The large value of these transactions means that some government officials are inevitably tempted to resort to corrupt practices either for personal monetary gain or political reasons (Bolton 2006:2). The prevalence of corruption in the procurement processes undermines both the value received by the government for the money it pays to contractors and the functioning of the procurement policy as a tool to achieve certain socio-economic objectives.

Corruption has clearly become a significant spoke in the wheels of the tendering process and, consequently, also in the provision of low-cost housing to those who are less fortunate as well as in the realisation of socio-economic objectives by means of this policy. It has been observed that corruption is particularly prevalent at the point at which the evaluation team is tasked with selecting a contractor for a particular project. It is often the case that either the contractor bribes the government official or the government official charges a fee for considering the contractor’s proposal. Furthermore, this practice is also quite common between project managers and contractors. It is significant to note the unique, two-fold nature of this corruption as it involves both government officials and private individuals.

Corruption can only occur in an institution which fosters an environment conducive to it. It is important to note that the extent of corruption in public sector procurement contracts can be curbed by vigorous monitoring. Mahlangu (2005:54) discusses the findings contained in the task team report commissioned by the MEC in 2005 to investigate corruption in the Department of Local Government and Housing. The report revealed that payments had been made to developers for houses which had either not been built at all or had been completed but were of a very poor quality. It is thus plain that the logistical capacity of the Department of Local Government and Housing in Limpopo Province to implement the procurement policy within the
low-cost housing programme is questionable; corruption is clearly undermining The South African Constitution’s specifically proviso that procurement serve the aims of efficiency and equity (McCrudden 2004:261).

6.4. Monitoring and evaluation mechanisms

The challenge in implementing preferential procurement policy in conjunction with the low-cost housing programme lies in the realm of inefficient monitoring and evaluation mechanisms. Monitoring of the implementation of projects is a continuous process which is crucial right from the start of a project all the way through until its conclusion (Bamberger 2004:122). Continuous monitoring and regular evaluation of the process, outcomes, and implementation impact are essential as methods for detecting deviations from the project’s focus or as indicators of the need for the redirection of strategies and activities. Reported incidents, in the process of implementing the procurement policy within the low-cost housing programme, of houses being built in ditches and trenches are the result of ineffective monitoring and evaluation mechanisms.

Further cause for concern is that the government pays for the finished product. So how does the policy break to allow payments for incomplete or not built housing units. It is important to recall that, in this situation, government is not the builder but the facilitator. The private contractors are the builders and the government administers the process and pays for the finished product. In order for the preferential procurement policy to be efficient, effective and successful in delivering low-cost housing, it needs to be accurately monitored and evaluated.

6.5. Inadequate involvement by government

Since government plays the role of facilitating rather than actually implementing the preferential procurement policy and low-cost housing programme, it can become completely detached from these processes, thus enabling the contractors to become almost entirely self-monitoring. This opens the entire process up to corruption and can be very unsettling for emerging contractors. Newadi and Dangalazana (2005:6-7) attest to the latter fact when pointing out that some of the challenges facing emerging contractors include the absence of incentives
from government to encourage emerging contractors, as well as the lack of funding available for emerging contractors from commercial banks. The issue of reluctance by the commercial banks to fund emerging contractors is the result of the general belief that emerging contractors remain high-risk in terms of their ability to gather together the capital to repay their loans. Government, by getting more involved with the process and throwing their weight behind the emerging contractors that it employs, has the power to dispel this belief to a large degree.

Ultimately, the South African Government’s insufficient involvement in the implementation of the preferential procurement policy results in the slowed and ineffective delivery of low-cost housing. Government’s negligible involvement in the monitoring and evaluation of the implementation of the preferential procurement policy allows for far too great a margin for error and corrupt practices. Therefore, government should be involved in the process from the beginning of all construction projects right through until their conclusions and should regularly gather progress reports and data about the implementation process.

6.6. Limited capacity

The project managers’ capacity to regularly inspect and monitor the progress of the contractors is limited by the fact that the number of project managers is less than the number of contractors appointed for multiyear projects. Contractors often manipulate this lack of supervision to their advantage by using poor quality materials in order to maximize their own profits. Project managers are needed simultaneously in the office and in the field, which places the standard of the low-cost houses at a high risk of being compromised. The capabilities of project managers are immediately impaired when they are without the necessary support and resources and are bombarded with too many different tasks.

As far as the contractors appointed for multiyear projects are concerned, they often have limited to no capacity at all to deliver at the large scale requisite of such extensive projects. This is a major cause for concern since, as a result, contractors often abandon low-cost housing projects before they have been completed, and run off with the money that the government has paid them for the complete project.
The difficulty with avoiding contractors of insufficient capacity is that they are not upfront about their limitations but attempt to conceal them. The fact that these sorts of contractors are managing to obtain contracts is proof that the Departments of Local Government and Housing in South Africa needs to come up with different ways of screening potential contractors. This will safeguard provincial departments against the misuse of taxpayers’ money by contractors with insufficient capabilities.

6.7. Political interference

Political interference has long been a nefarious presence within government institutions. The susceptibility of government administration to political interference can have a profoundly effect on the governance of the country. The evaluation team in the Departments of Local Government and Housing in South Africa is no exception as it is largely influenced by political authority (Anon. 1547). Political interference in procurement procedures is inappropriate and disconcerting as it undermines the very objectives of the procurement policy.

Conclusion

Effective facilitation on the part of the Provincial Departments of Local Government and Housing in South Africa is possible when the monitoring and evaluation mechanisms are consolidated. Furthermore, monitoring should be conducted continuously and be incorporated in the planning for construction projects. Measures of performance are important in overseeing the work of contractors and initiating corrective measures where deviations or errors occur. The implementation of the preferential procurement policy within the low-cost housing programme can be effective, efficient and successful by the utilisation of accurate performance measures and the ongoing monitoring and evaluation of construction work. The Provincial Departments of Local Government and Housing should divulge their criteria to the prospective contractors in a comprehensive format. In the procurement system, for contracts below the value of R 500 000, a formula of 80/20 applies. For contracts above the value of R 1 million, a formula of 90/10 is to be followed. The improved capacity for project managers, local municipalities and contractors will positively contribute to the
successful implementation of the procurement policy with reference to a low-cost housing programme.

7. References


Dali, R.M., Ameermia, M.S., Nonyana, M.R and Setati, N. 2009. The strategic advantage that led the Limpopo Provincial Government Department of Local Government and Housing winning of the Prestigious Govan Mbeki National Housing Award: detailed strategies to ensure that they will keep on winning this prestigious award in the future. Executive Management Programme (integrated project), University of Limpopo, Turffoof Graduate School of Leadership.


Ncwadi, M.R and Dangalazana, T. 2005. An Exploratory Study into the Challenges Facing the Emerging Contractors Involved in the Construction of Low Cost Housing in Wells
Estate and Ikamv’elihle Townships in the Nelson Mandela Metropole, South Africa. World Congress on Housing Transforming Housing Design: September 27-30, Pretoria, South Africa.


