

## **Preferential procurement in the public sector: The case of Amathole**

*Peer reviewed and revised*

### **Abstract**

The end of the apartheid era in South Africa ushered in a new institutional environment through changes to legislative frameworks in government departments. A key aspect of the transformation is the economic empowerment of the mainly historically disadvantaged groups in the country through procurement.

The thrust of the issue is the assessment of the extent of compliance with Act No. 5 of 2000: Preferential Procurement Policy Framework Act (PPPPFA), 2000 at government departments, with particular focus on the Amathole region of the Eastern Cape Province.

The assessment was undertaken in a qualitative and quantitative research study conducted among key construction industry stakeholders such as public-sector clients, architects, engineers, and quantity surveyors based within the Amathole region.

Selected findings include that there is a perceived low level of awareness of preferential procurement in the public sector as the majority of the institutions investigated have not completely implemented procurement responsibilities as a dedicated function within their organisations. Another significant finding arising from the study is that there are conflicting perceptions among consultants regarding procurement strategies for different types of project.

**Keywords:** Construction, consultants, procurement, public sector, South Africa

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## Abstrak

Die einde van die apartheidsera in Suid-Afrika het 'n nuwe institusionele omgewing deur veranderinge aan wetgewingsraamwerke in regeringsdepartemente ingelei. 'n Sleutelaspek van die transformasie is die ekonomiese bemagtiging van die hoofsaaklik historiese agtergeblewene groepe in die land deur verkryging.

Die kruks van die saak is die assessering van die omvang van inwilliging met Wet No. 5 van 2000: Wet op Raamwerk vir Voorkeurverkrygingsbeleid deur regeringsdepartemente met spesifieke fokus op die Amathole streek van die Oos-Kaapprovinsie.

Die assessering is deur 'n kwalitatiewe en kwantitatiewe navorsingstudie onder sleutelkonstruksie industrie-aandeelhouders soos openbare sektor kliënte, argitekte, ingenieurs, en bourekenaars binne die Amathole streek gedoen.

Geselekteerde bevindings sluit in dat daar 'n lae vlak van bewustheid oor voorkeurverkryging in die openbare sektor is omdat die meerderheid instansies wat ondersoek is nie volledig verkrygingsverantwoordelikhede as 'n toegewyde funksie binne hul organisasies geïmplementeer het nie. 'n Ander noemenswaardige bevinding uit die studie is die botsende persepsies onder konsultante aangaande die strategieë vir verskillende projektipes.

**Sleutelwoorde:** Konstruksie, konsultante, verkryging, openbare sektor, Suid-Afrika

## 1. Background

According to the Construction Industry Development Board (CIDB) (2004: 1), procurement was identified as a tool to achieve economic reform to regulate a bias in award of contracts in favour of historically disadvantaged individuals (HDIs) in South Africa. This type of procurement, termed preferential procurement, was formally initiated in 1998 in South Africa. At the beginning, an interim strategy for public sector procurement reform in South Africa, commonly known as the ten-point plan, was developed by the Department of Public Works. The ten-point plan paved the way for the promulgation of Act No. 5 of 2000: *Preferential Procurement Policy Framework Act (PPPFA), 2000* (Republic of South Africa, 2000a: 1).

The PPPFA introduced a principle of equity and black economic empowerment within the traditional system. The PPPFA primarily regulates the establishment of conventional procurement systems with point-scoring parameters that relate to cost and empowerment indicators. HDIs are targeted to benefit when procuring services in the public sector of South Africa through preferential means. Different options could hence be considered to contract for professional services. The PPPFA identifies two categories of point-scoring. These two categories are referred to as 90:10 and 80:20 point-scoring systems (CIDB, 2004: 5). They are differentiated by a contractual value, and the procuring institution must specify such value in the

preferential procurement policy. The initial points are allocated to cost and the latter points to empowerment indicators. The PPPFA also prescribes that all government institutions must develop preferential procurement policies for awarding such contracts in a credible fashion. In particular, the PPPFA requires state institutions to determine their preferential procurement policy and to implement it within the framework through a preference point system, which dictates that (CIDB, 2004: 5):

- for contracts with a Rand value above a prescribed amount, a maximum of 10 points may be allocated for specific goals provided that the lowest acceptable tender scores 90 points for price;
- for contracts with a Rand value equal to or below a prescribed amount, a maximum of 20 points may be allocated for specific goals provided that the lowest acceptable tender scores 80 points for price;
- any other acceptable tenders which are higher in price must score fewer points on a *pro rata* basis, calculated on their tender prices in relation to the lowest acceptable tender in accordance with a prescribed formula, and
- the contract must be awarded to the tenderer who scores the highest points unless objective criteria in addition to that pertaining to specific goals justify the award to another tenderer.

Further, the framework provides examples of specific goals in that it states that specific goals may include contracting with HDIs, any specific goal for which a point may be awarded, and any goals contemplated must be measurable, quantifiable and monitored for compliance (CIDB, 2004: 5). To this end, the Department of Treasury is a custodian of Act No. 53 of 2003: *Broad Based Black Economic Empowerment (BBBEE) Act, 2003*. The BBBEE Act complements the PPPFA, and broadens the target areas for business sectors in order to address the six critical areas of empowerment (South Africa, 2003: 1):

- increasing the number of black people that manage, own and control enterprise and productive assets;
- facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- human resource and skills development;

- achieving equitable representation in all occupation categories and levels in the workforce;
- preferential procurement, and
- investing in enterprises that are owned or managed by black people.

In essence, in addition to the BBBEE, public-sector clients have to comply with the prescripts of the PPPFA in relation to empowerment, which sets the framework within which organs of state must implement their empowerment policies (SAACE, 2006: 2). To be succinct, as construction is one of the sectors targeted by the BBBEE Act, built-environment consultants are thus relevant to the implementation of the reform. Hence, the focus of the study among built-environment consultants is justified, taking into account the role they play with respect to the facilitation and implementation of construction-related investment projects. An additional responsibility would then be to ensure the successful integration of empowerment or social goals with project development goals. Hence it is important that targeted procurement be rightfully implemented in appointing built-environment consultants.

In order to gain understanding of these issues, the study assesses the extent to which PPPFA directives are observed by the Public Sector using the Amathole region as a case study. The PPPFA directives were tested by measuring compliance with its prescripts through the lens of public-sector employees and selected consultants based within the Amathole region. The adequacy of management systems, including statutory decision-making processes, integration of procurement responsibilities, and the capacity of institutions to comply with the directives, were investigated.

## **2. Literature review**

The perceived reliance of the public sector on consultants (Bowen, Pearl, Cattell, Hunter & Kelly, 2007: 63) underscores the need to examine how their services are procured for construction project purposes. The extent of integrating project-development objectives with social objectives is related to how preferential procurement forms an inherent element of overall project goals (CIDB, 2007: 1). Hence, preferential procurement should be considered at the earliest possible stage of the project and should be carried through the subsequent stages in sequence.

Empowerment targets should be included when procurement is driven by preferential principles. Such issues as employment and/or

training of HDIs should feature as early as the conceptual stage. In South Africa, there are six prescribed built-environment professions recognised by Act No. 43 of 2000: *Council for Built Environment Act, 2000*. These professions include the (South Africa, 2000b: 1):

- Architectural profession;
- Project and Construction Management professions;
- Engineering profession;
- Landscape Architectural profession;
- Property Valuers profession, and
- Quantity Surveying profession.

However, this study is limited to three professions, namely the architectural profession, the engineering profession, and the quantity surveying profession. These professions have different roles to perform in different project environments. In particular, appointments of professional services by state institutions are essentially governed by a number of legislative frameworks. According to Table 1, legislative frameworks that directly affect procurement in South Africa total five in number (SAACE, 2006: 2). Of this number, two are directly related to equitable procurement systems.

Table 1: Procurement-related legislative frameworks in South Africa

<i>Constitution of the Republic of South Africa (Act No. 108 of 1996) – Section 217 states that government procurement systems must be fair, equitable, transparent, competitive, and cost-effective</i>				
Fair, transparent, competitive, and cost-effective			Equitable	
Public Finance Management Act (Act No. 1 of 1999)	Municipal Finance Management Act (Act No. 56 of 2003)	Construction Industry Development Board Act (Act No. 38 of 2000)	Preferential Procurement Policy Framework Act (Act No. 5 of 2000)	Broad Based Black Empowerment Act (Act No. 53 of 2004)
PFMA	MFMA	CIDB	PPPFA	BBBEE
Public-sector clients	Public-sector clients	Public- and private-sector clients	Public-sector clients	Public- and private-sector clients

Source: SAACE (2006: 2)

The PFMA and MFMA that emanated from National Treasury, *inter alia*, prescribe how procurement in the public sector should be undertaken. The CIDB Act provides for the establishment of the Construction Industry Development Board (CIDB), which is an entity of the Department of Public Works. The Act mandates the CIDB to, *inter alia*, provide strategic leadership to industry stakeholders in

order to stimulate sustainable growth as well as reform and develop the industry in order to bring about improved performance of the industry (South Africa, 2000c: 1). Pursuant to its mandate therefore, the CIDB embarked on the publication of statutory regulations and guidelines such as the CIDB standard for uniformity in construction procurement (SFU), which refers to the CIDB best practice guidelines for construction procurement for procurement-related issues.

Specifically, the CIDB best practice guideline number A7 addresses the procurement of professional services (CIDB, 2007: 9). The recommended procedures for the appointment of professional service providers according to the guideline took cognisance of the importance of quality and price. Where quality is deemed to be the most important criteria, the guidelines state that negotiated procedure, proposal procedure using the two-stage system, open procedure, qualified procedure, proposal procedure using two envelopes, and quotation envelopes, should be used for complex projects. Where price is deemed to be the most important criterion, the guideline recommends negotiated procedure, nominated procedure, open procedure, and quotation procedure for the appointment of consultants for routine projects.

However, the then South African Association of Consulting Engineers (SAACE), now known as Consulting Engineers South Africa (CESA), recommended that the selection procedure for the appointment of consultants should be ability-based or quality-based (SAACE, 2006: 4). In terms of ability selection, the appointment may be made by referral, panel or roster. It is notable that the roster system of selection has been popular in South Africa as it ensures that work is automatically rotated among firms on the roster, using a number of specific selection criteria, which include position on roster, size of firm, fields of competence, locality of offices, and empowerment criteria (SAACE, 2006). In addition, in terms of quality-based selection that comprises prequalification, submission of proposals, evaluation of proposals, and agreement, SAACE (2006: 5) recommends that firms may be selected based on skills and qualifications of personnel; technical competence; targeted selection criteria such as empowerment goals or local capacity; reputation; experience on similar projects; capacity to undertake the project; understanding and commitment to the client's interests; impartiality; professional integrity; quality management system, and knowledge of local issues.

Nevertheless, although the construction sector is perceived to be promoting government's policy and preferential procurement with its perceived benefits, Kajimo-Shakantu & Root (2006: 306)

argue that preferential procurement policies remain a 'contested' concept from a conflict theory perspective. They contend that, despite the efforts and progress made by government since the inception of the PPPFA, access to work opportunities provided by preferential procurement is not always translated into sustainable empowerment. In particular, they observe that the reason why preferential procurement is so significant to the South African construction industry is the dual role of government as a major client of the sector and policymaker, as well as it being labour-intensive with low barriers to entry coupled with the structure of the construction industry. However, these have not overcome the challenges of meeting socio-economic objectives (Kajimo-Shakantu & Root, 2006: 303). They note that inadequate management systems and lack of capacity within the public sector, poor and inconsistent procurement practices by client bodies, fronting and the abuse of subcontractors, poor management and inadequate skills, lack of permanent relationships in structured joint ventures, lack of access to capital and finance, and high competition and unprofitable tender prices are challenges working against the realisation of the benefits of preferential procurement practices.

### **3. The research**

Given the extensive roles allocated to local government in terms of the implementation of municipal infrastructure projects, the perceptions of stakeholders in the public sector were deemed important to the findings of this particular study. As vividly amplified in the Department of Provincial and Local Government (DPLG), (2006) document entitled *Municipal infrastructure: Roles and responsibilities*, the contributions of the public sector to the provision of municipal infrastructure cannot be overemphasised.

As a result, the sample frame of the research project was constituted by twelve institutions, which include all nine (9) municipalities in the district, and three provincial departments. The common element within the organisations that were surveyed is that they are all responsible for major public sector capital infrastructure programmes. The three provincial departments include the Department of Public Works (DPW), the Department of Transport (DoT), and the Department of Housing (DoH). These departments are either individually or collectively responsible for a number of projects related to the delivery of roads, transport infrastructure and municipal infrastructure for housing development. The nine municipalities are Mbashe, Mnquma, Great Kei, Amahlathi, Buffalo

City, Ngqushwa, Nkonkobe and Nxuba local municipalities, and the Amathole District Municipality (ADM).

According to a recently released report, ADM has the second largest economy in the province, contributing 33% to the provincial economy (ADM, 2011: 24). East London, Bhisho, Butterworth and King Williams Town are areas of significant economic activity in the district which is concentrated mainly within the Central Business Districts (CBD) of these major towns. These towns also function as centres of economic activity for neighbouring areas and smaller towns, with manufacturing, trade, finance and community services sectors dominating the district's economy. The report further notes that the economy of the district is dominated by the community services sector. The dominance of this sector that includes the government sector is partly attributed to the location of the Provincial Government Head Offices in Bhisho. This sector is also a major employer as it accounted for 38% of all formal jobs in the ADM.

However, a growing modern economy linked to global production chains in East London is contrasted with an extremely poor rural economy in former homeland areas (ADM, 2011: 25). An unemployment rate of 30% was recorded in the area in 2009 and 50% of the population in the district were estimated to be living below the minimum living level threshold. High levels of poverty and inequality thus exist, especially in the eastern part of the district. Therefore, the ADM report contends that there is a major need for investment in social and economic infrastructure throughout the district, but especially in the rural areas (ADM, 2011: 25). This contention therefore amplifies the need to re-examine the dynamics related to procurement or rather preferential procurement in the public sector in the district.

Forty consulting firms constituted the sample stratum. A random sample undertaken during interviews to avoid bias of views resulted in a sample size of thirteen. In addition, Leedy & Ormrod (2005: 200-207) provide guidance for the descriptive method adopted for data-generation and analysis. The qualitative data-generation stage was preceded by preliminary research done to arrive at important constructs for the interview. This approach comprised personal interviews of the procurement managers of one municipality, one provincial department and one district municipality using a non-standardised semi-structured schedule, accompanied by questionnaires distributed to targeted professionals working in built-environment consulting practices in the region.



A pilot study using the draft questionnaire at two public-sector institutions and two built-environment consultants yielded useful feedback. The feedback was incorporated in the final version of the questionnaires, which were administered to the respondents. Due to the busy schedule of the targeted managers and consultants, a copy of the questionnaire was e-mailed to each respondent for his/her personal attention. E-mailed questionnaires were also followed-up with telephonic reminders.

Findings from an extensive literature survey and the outcome of these interviews were used for the second quantitative data-production stage comprising the design, pre-test and administration of a structured questionnaire among selected public-sector institutions and practising professionals in the region. The structured questionnaire for procurement managers consisted of three sections. The first section (A) of the questionnaire addressed the demographic background of the respondent and section two (B) aspects of knowledge and background relating to the basis for operational effectiveness such as existence of policy and strategies used on procuring consultants. Section three (C) addressed institutional capacity, which included aspects such as training and development of personnel.

#### **4. Findings and discussion**

Table 2 indicates the academic profile of the public-sector procurement officials who responded to the survey. It is notable that 42% of the respondents are engineers, while quantity surveyors and architects collectively constitute only 16%. In effect, 58% of the respondents are professional built-environment practitioners. Table 3 indicates the respondents' perceptions of compliance with PPPFA legislative directives in their respective institutions. It is notable that out of the 13 possible responses, 92% of the respondents are of the opinion that, in terms of compliance, their institutions can be deemed to be complying with PPPFA directives by having functional tender committees and ensuring that employees have thorough knowledge of the PPPFA. Further, 67% of the respondents perceive that compliance with tender evaluation points (either 80/20 or 90/10), as stipulated in the PPPFA, is adequate in their institutions, while only 50% affirm that their institutions have PPPFA-related procurement policy in place. However, it is instructive to note that there is more compliance within the provincial departments than in the municipalities. In particular, only 40% of the municipalities have fully complied with the PPPFA directives.

Table 2: Professions of procurement officers

Profession	Municipalities	Provincial government	Total	
			No.	%
Engineer	5	0	5	42.0
Quantity Surveyor	1	0	1	8.0
Architect	1	0	1	8.0
Supply chain	1	0	1	8.0
Others	1	3	4	33.0
Total	9	3	12	100.0

Table 3: Compliance with legislative directives

Legislative directive	Municipalities	Provincial government			Total	
		DPW	DoT	DoH	No.	%
Knowledge of PPPFA	8	1	1	1	11	92.0
Procurement policy in place	3	1	1	1	6	50.0
Tender evaluation point i.e 80/20	5	1	1	1	8	67.0
Functional tender committee	8	1	1	1	11	92.0

Table 4 indicates that the respondents are of the opinion that seven public-sector institutions have tender technical personnel (58%); twelve public-sector institutions have tender committees (100%), and five public-sector institutions have audit committees as part of PPPFA-related required management structures (42%). In particular, four municipalities have tender technical personnel, nine municipalities have tender committees, and three municipalities have audit committees in place. It is also notable that, with the exception of the DoT, all three provincial departments have the desired management structures in place.

Table 4: Institutional set-up for procurement function

Statutory structures	Municipalities	Provincial government			Total	
		DPW	DoT	DoH	No.	%
Tender technical	4	1	1	1	7	58.0
Tender committee	9	1	1	1	12	100.0
Audit committee	3	1	0	1	5	42.0

Table 5 indicates the respondents' perceptions of the extent of compliance of their respective institutions with operational capacity requirements in terms of PPPFA procurement. In general, only three municipalities and the provincial departments place statutory structures such as procurement officers, a procurement unit, and

procurement employees in place. In effect, only 50% of the public sectors have operational capacities required for the implementation of PPPFA procurement directives. Therefore, within the surveyed institutions, the capacity of procurement units varies from one support employee to a multi-disciplinary team of personnel who account to the procurement officer.

Table 5: Operational capacity indicators

Statutory structures	Municipalities	Provincial government			Total	
		DPW	DoT	DoH	No.	%
Procurement officer	3	1	1	1	6	50.0
Procurement unit	3	1	1	1	6	50.0
Procurement staff	3	1	1	1	6	50.0

Hence, it can be assumed from the above analysis that institutions follow different processes in the procurement of consultants, since appointments are strongly dictated by institutional capacity arrangements or limitations. The analysis of the aforementioned findings ultimately led to the emergence of two distinct categories of institutions pertaining to the discourse. The categories include:

- Category 1: Institutions with procurement units, and
- Category 2: Institutions without procurement units.

The implications of this assumption are that category 1 institutions seem to follow the process presented in Figure 1 with the contract influences being undertaken by the line functions. The procurement unit would then be involved with the procurement strategies and the monitoring of such during the contract execution stage. In terms of category 2 institutions, there seems to be no distinctive line drawn between the contracting influences and the procurement strategies to the extent that procuring officers fuse these two into one process without a clear stage breakdown, as if there is no distinction.

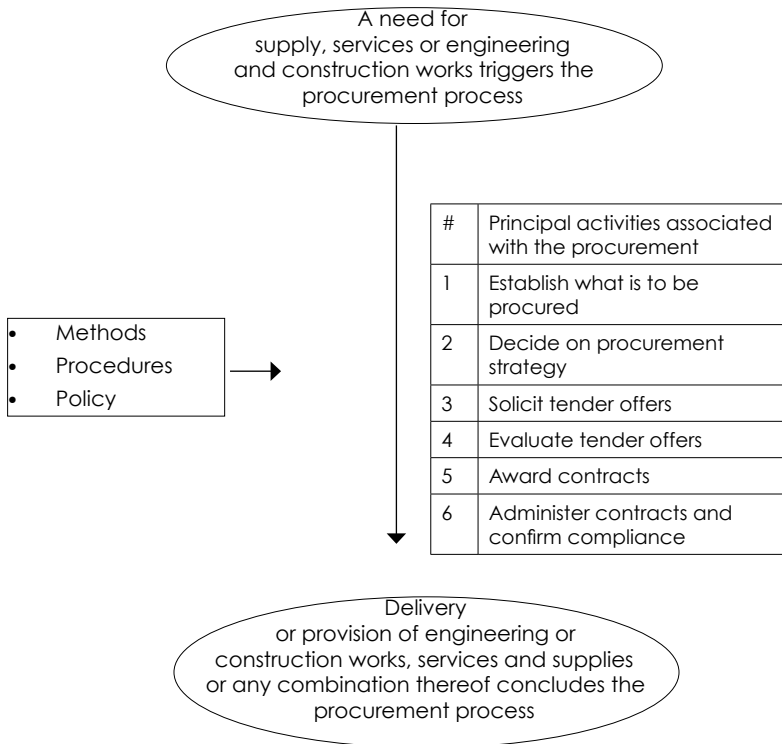


Figure 1: Components of a procurement system  
Source: Watermeyer, 2004: 33

Having considered the issues that may influence the appointment of consultants by public-sector institutions based at Amathole, the views of built-environment consultants were sought in order to arrive at robust perspectives relative to PPPFA implementation. To this end, Table 6 indicates the professional group, as well as the age of the businesses that were surveyed. In particular, all respondents to the survey were directors of their respective businesses at the time of the research, possessing either an academic diploma or degree qualification. Out of the thirteen consulting practices surveyed, 61.5% have been in existence for over ten years, 23.1% have been in existence for over six years, but less than ten years, while 15.4% have been in existence for less than five years. Therefore, it can be assumed that the majority of the built-environment respondents are

sufficiently experienced in the industry to provide valid inputs relative to the subject under investigation.

Table 6: Profile of built-environment consultants

Age of firm (years)	Engineer	Architect	Quantity surveyor	Total	
				No.	%
0 - 5	1	1	0	2	15.4
6 - 10	1	1	1	3	23.1
> 10	8	0	0	8	61.5

Table 7 indicates the level of the consulting practices' awareness of the PPPFA. The table suggests that 76.9% of the engineers that responded to the survey are aware of the PPPFA, while 7.7% of the architects and quantity surveyors surveyed affirmed their awareness of the Act. Perhaps, the high percentage of awareness reflected relative to engineers may be ascribed to the fact that engineering consultancies constitute the greater percentage of respondents.

Table 7: Awareness of Act No. 5 of 2000: Preferential Procurement Policy Framework Act, 2000

Profession	Yes (%)
Engineer	76.9
Architect	7.7
Quantity surveyor	7.7

Table 8 indicates the respondents' perceptions relative to public-sector compliance with PPPFA requirements. The findings suggest that 61.5% of the respondents are of the opinion that they comply with the 'developed equity plan'-related PPPFA directive; 76.9% with the 'established equity targets'-related PPPFA directive; while 15.4% with the 'established equity committee'-related PPPFA directive. However, it is notable that none comply with the 'HDIs in equity committee' directive.

Table 8: Observing preferential procurement policy requirements

PPPFA directive	Engineer	Architect	Quantity surveyor	Total	
				No.	%
Developed equity plan	8	0	0	8	61.5
Established equity committee	2	0	0	2	15.4
HDIs in equity committee	0	0	0	0	0.0
Established equity targets	8	1	1	10	76.9

Table 9 indicates the respondents' perceptions of procurement methods used for engaging built-environment consultants after the promulgation of the PPPFA Act in 2000. Specifically, the respondents perceive that on average: 31.5% of appointments are based on open competition; 12.7% are based on closed competition, and 45.5% are based on selection/roster. However, given the 5.0% and 6.7% response percentages, the appointments based on pre-qualified competition and negotiated contracts can be deemed to be limited.

Table 9: Profile of procurement methods used by clients

Procurement method	Engineers (%)										Architects/ Quantity Surveyors (%)			Mean (%)
	1	2	3	4	5	6	7	8	9	10	11	12	13	
Open competition	0	55	25	50	20	30	60	60	60	0	50	0	0	31.5
Closed competition	0	15	60	0	60	0	10	20	0	0	0	0	0	12.7
Pre-qualified competition	0	15	0	0	20	0	10	20	0	0	0	0	0	5.0
Negotiated contract	0	10	67	0	0	0	10	0	0	0	0	0	0	6.7
Selection/ Roster	0	5	67	50	0	70	10	0	40	100	50	100	100	45.5

## 5. Conclusions and recommendations

The findings of this study reveal that in Amathole, the level of preferential procurement awareness in the public sector can be deemed to be low. The majority of the public-sector institutions have seemingly not institutionalised procurement responsibilities as a dedicated function within their organisations. This is more prevalent in local government in the region, as only the district municipality, and one local municipality achieved a significant level of compliance.

Although there are conflicting perceptions among consultants regarding procurement strategies for different types of project, there is, however, an observed improvement in HDI shareholding patterns. In addition, there is a limited structured approach regarding the matters of HDI integration on governance structures such as equity committees within consultants. Therefore, it is recommended that capacity-building programmes be streamlined to focus on preferential procurement requirements. A comprehensive programme must be developed to deal with the gaps identified in the study across the public sector.

In addition, synergy must be developed between provincial and local government procurement policies and structures for effective preferential procurement monitoring. This must be conducted under the supervision of a neutral procurement ombudsman to prevent social complexities as envisaged in the Ten-point plan. Perhaps the CIDB can perform the function of ombudsman. Policy must address, *inter alia*, the dynamic nature of services being procured, and the different types of project. Consultation with stakeholders such as consultants should be given priority when developing such policies so that common ground is achieved with procurement strategies.

In this way, public-sector institutions would be obliged to take charge of their responsibility and can be monitored on a continuous basis with persistent support being provided in a structured manner. Integrating procurement as part of the performance management systems and developing a balance scorecard wherein preferential procurement inputs, processes and outputs are clearly stipulated and easy to monitor is deemed necessary.

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