

**PUBLIC SECTOR PROCUREMENT AS STRATEGIC TOOL FOR BLACK
ECONOMIC EMPOWERMENT AT SEDIBENG DISTRICT MUNICIPALITY**

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ABSTRACT

The central objective of this study was to establish the extent to which public procurement, as applied at Sedibeng District Municipality, contributes to the development of designated suppliers. Previously, procurement was considered just another function of government responsible for purchasing and receiving goods. Currently, procurement is considered a strategic function that can be utilized by government to achieve certain policy objectives, such as Black Economic Empowerment (BEE) and Local Economic Development (LED).

If implemented properly, without favoritism, nepotism and corruption, public sector procurement will promote the empowerment of designated groups. In this way, it will address socio-economic imbalances of the past. The study's hypothesis implied that Sedibeng District Municipality has laudable objectives to promote black economic empowerment through procurement. However, the implementation procedures and processes showed considerable constraints.

Academic literature and government procurement documents were reviewed; and interviews were conducted at Sedibeng municipal area. The literature study was based on best procurement practices both in government and private sector. Empirical research was conducted on Sedibeng District Municipality's procurement unit practices, Small, Medium and Micro Enterprise development and the benefits of procurement to designated suppliers. The purpose was to determine the role that procurement policies play in promoting black economic empowerment.

Eventually, a number of models and systems were recommended to improve procurement policies and procedures at Sedibeng District Municipality. These methods include: Management Assessment System; Realistic Objectives System; Departmental Evaluation Plan; Contract Progress Report Form; and Checklists. In the view of the researcher, a combination of these methods can assist to improve procurement policies and procedures.

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CHAPTER 1

INTRODUCTION: ORIENTATION AND METHOD OF STUDY

1.1 ORIENTATION AND BACKGROUND TO STUDY

At the outset of the procurement reform process in 1995, it was recognized that a consistent legislative framework would be required to give effect to government's procurement reform policy objectives. A Green Paper on Public Sector Procurement Reform in South Africa was published in April 1997. The Green Paper recognized that public sector procurement could be used by government as a mechanism to also achieve certain broader policy objectives such as Black Economic Empowerment (BEE) (Department of Finance, 2003:11).

In September 2003, Cabinet adopted a Supply Chain Management (SCM) policy to replace the outdated procurement and provisioning practices with a Supply Chain Management function that was to be an integral part of financial management and was to conform to international best practices. The new arrangement promotes uniformity in SCM processes and also in the interpretation of government's preferential procurement legislation and policies, which should themselves be seen in the context of other legislative and policy requirements (National Treasury (a), 2004:2).

Procurement is the systematic process of deciding what, when, and how much to purchase; the act of purchasing it; and the process of ensuring that what is required is received on time, in the quantity and quality specified (Burt, 1984:3). Supply chain management is a management philosophy aimed at integrating a network (or a web) of upstream linkages (sources of supply), internal linkages inside the organization and downstream linkages (distribution and ultimate customers) in performing specific processes and activities (Hugo, Badenhorst-Weiss & Van Rooyen, 2002:29). Briefly, supply chain management is the process of planning, implementing and controlling the operations of the supply chain as efficiently as possible (Wikipedia, 2008:1).

The importance of using public sector procurement as a development tool is slowly being acknowledged. Procurement provides business and employment opportunities, and, depending upon how it is structured and conducted, can be used as an important instrument of government policy to facilitate social and economic development (Rogerson & Vorster, 2003:1).

Section 217 (1) of the *Constitution of the 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 the national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective. Department of Finance (2003:15) mentions that section 217 (3) of the Constitution 1996 further confers an obligation for national legislation to prescribe a framework providing for preferential procurement to address the social and economic imbalances of the past.

In terms of section 2 (1) of the *Preferential Procurement Policy Framework Act* 5 of 2000, an organ of state must determine its preferential policy. It must then implement it within the framework of the preferential point system. For instance, the 80/20 and 90/10 preference point systems are mainly used. The Department of Trade and Industry (2004:53) asserts that preferential procurement mechanisms include the procurement of goods and services from categories of Black Economic Empowerment (BEE) contributors.

Alexander (2008:2) points out that South Africa's policy of BEE is not simply a moral initiative to redress the wrongs of the past. Black economic empowerment is not affirmative action, although employment equity forms part of it. Neither does it aim to merely take wealth from white people and give it to blacks. It is merely a growth strategy, targeting the South Africa's weakest point: inequality. There is a danger, recognized by the government, that BEE will simply replace the old elite with a new black one, leaving fundamental inequalities intact. For this reason the strategy is broad-based, as shown in

the name of the legislation: the *Broad-Based Black Economic Empowerment Act* 64 of 2003.

1.2 PROBLEM STATEMENT

Sedibeng is one of the districts of Gauteng province of South Africa. The seat of Sedibeng is Vereeniging. The major spoken local language among the 794 605 people is Sesotho (2001 Census). Sedibeng District Municipality (SDM) consists of the three local municipalities, namely Lesedi, Midvaal and Emfuleni. The total number of households in Sedibeng is estimated at 224 307 (Wikipedia, 2008:1).

There are challenges experienced by Sedibeng District Municipality's Supply Chain Management Unit as there are grey areas when it comes to procedures. The current policy's procedure manual does not include new legislation, e.g. *Preferential Procurement Policy Framework Act* and *Broad-Based Black Economic Empowerment Act* (Sedibeng District Municipality Quarterly Report, 2008:1).

In terms of bid evaluations, Sedibeng District Municipality Quarterly Report (2008:2) points out that it relies on bidders to declare their past SCM practices, and, further, the National Treasury's database for tender defaulters does not assist as there are no bidders who are blacklisted. National Treasury (2005:1) noted that it received several complaints regarding incorrect evaluation of bids.

According to Sedibeng District Municipality Quarterly Report (2008:4), the SCM policy lacks a procedure that must be followed when dealing with an unsolicited bid. Section 113 of the *Municipal Finance Management Act* 56 of 2003 stipulates the following: firstly, a municipality or municipal entity is not obliged to consider an unsolicited bid received outside its normal bidding process; secondly, if a municipality or municipal entity decides to consider an unsolicited bid received outside a normal bidding process, it may do so only in accordance with a prescribed framework; and thirdly, the framework must strictly regulate and limit the power of municipalities to approve unsolicited bids.

There are no effective monitoring mechanisms to ensure that a contract or agreement procured through SCM policy is properly enforced. There are also no measures to ensure regular monitoring of the contract performance under agreement (Sedibeng District Municipality Quarterly Report, 2008:5).

Broad-Based Black Economic Empowerment (B-BBEE) has been identified in the Sedibeng Growth and Development Strategy (GDS) as one of the programs required for reinventing the economy. A fresh look at the SMME and cooperative sector is needed. Sedibeng District Municipality is obliged to implement B-BBEE as part of the growth and development of the region. Local government procurement policies can serve as part of the guidelines in this regard (Sedibeng LED, 2008:1).

Small, Medium and Micro Enterprises (SMMEs) – rather than large companies – are the true engines of local economic development. These businesses, ranging in size from a company employing less than 200 people to a micro business employing less than five people, are the largest source of employment for many South African communities and are the source of most new jobs (National Business Initiative, 1998:8).

It is apparent that there is a policy and procedure problem to align preferential procurement and B-BBEE at SDM. This results in a slow movement from BEE which advocates black control and ownership, to B-BBEE which promotes the broader empowerment of designated beneficiaries, namely, black women and men, workers, youth, people with disabilities and people living in rural areas. This problem adversely affects empowerment of black SMMEs and cooperatives through procurement. Moreover, procurement contracts do not seem to assist emerging enterprises in terms of skills transfer and enterprise development. The reason is that there is no mechanism in place to enforce and monitor contract performance under agreement. In this case, research is necessary to explore the alignment of preferential procurement and B-BBEE, thereby, leading to improvement of procurement processes and appropriate implementation of policy at SDM to benefit B-BBEE beneficiaries.

1.3 HYPOTHESIS

Sedibeng District Municipality has laudable objectives to promote BEE through procurement; its implementation procedures appear flawed to achieve the objectives.

1.4 RESEARCH QUESTIONS

Resulting from the orientation and problem statement above, the research endeavors to answer the following questions:

- What do public sector procurement and BEE entail?
- What public sector procurement implementation procedures exist at the SDM?
- What are the constraints and benefits of public sector procurement in empowering designated groups at SDM?
- What recommendations can be provided to improve procurement at SDM?

1.5 RESEARCH OBJECTIVES

From the research questions above, the objectives of the research are the following:

- To provide context of the concepts public sector procurement and BEE;
- To give an outline of the processes used to procure goods and services at SDM;
- To research the constraints and benefits of public sector procurement in empowering designated groups at SDM; and
- To give recommendations that may improve public sector procurement at SDM.

1.6 RESEARCH METHODOLOGY

To conduct research, the following methods were used:

1.6.1 Literature review

To provide the context of the concepts public sector procurement and BEE, literature review was conducted on books, legislations, newspapers and electronic sources. Sources consulted for this study are available at the North-West University library. Also consulted were the primary documents of SDM on procurement and BEE. Any document or information that was used for this research was obtained by permission of the Chief Financial Officer of the municipality and other role-players.

1.6.2 Empirical research

The scope of the empirical study was limited to Sedibeng District Municipality. The following research methods were applied:

1.6.2.1 Interview

Officials in the following capacities were interviewed: Chief Financial Officer, Senior Procurement Officer and municipal legal representative to determine the limitations in legislation and procurement procedures at SDM, as well as the degree to which public sector procurement impacts on BEE. These officials were interviewed as they form a significant part of the municipal accounting authority. The interviews were conducted face to face to enable the researcher to shed light on questions which were not understood by the respondents. Interviews were also used by the interviewer to investigate further following the answer of the interviewees. To clarify unclear answers on questionnaires telephonic interviews were also conducted.

1.6.2.2 Structured questionnaire

Guided by the supervisor of the study, structured questionnaire was developed to solicit the views of procurement officials. Officials in the following positions were asked to fill

in questionnaires: Chief Financial Officer; Senior Procurement Officer; and two Procurement Officers. The objective was to determine the functioning of the procurement department or unit and how SCM policies were implemented to support BEE.

Sedibeng Local Economic Development (LED) unit official with the following designation was also asked to fill in a questionnaire: SMME Development Officer. The objective was to establish the impact of public sector procurement on SMME development, and how municipal procurement, B-BBEE and SMME development programs are linked. Furthermore, a questionnaire was completed by members of the bid committees. Here the objective was to establish the judicious implementation of procurement policies. Twenty (20) beneficiaries of SDM procurement policies, i.e. contractors or suppliers were randomly selected and asked to complete questionnaires to determine their views on their extent of empowerment.

1.6.2.3 Observation

Observations were conducted in the procurement division. These observations included sitting in the bid committee's meeting, checking e-procurement filing and supplier information retrieval. These observations were made through appointments with relevant officials.

1.7 OUTLINE OF CHAPTERS

To achieve set objectives of the study, chapters are structured in the following manner:

Chapter 1: Introduction: Orientation and method of study

Chapter 2: Context of public sector procurement and Black Economic Empowerment

Chapter 3: Analysis of public sector procurement processes at SDM

Chapter 4: Empirical research on constraints and benefits of procurement at SDM

Chapter 5: Summary, findings and recommendations

CHAPTER 2

CONTEXT OF PUBLIC SECTOR PROCUREMENT AND BLACK ECONOMIC EMPOWERMENT

2.1 INTRODUCTION

Public sector procurement and Black Economic Empowerment (BEE) are almost inseparable concepts in South Africa. The two concepts form the basis of most government empowerment policies currently. It is imperative for individuals and private companies to meet BEE requirements if they intend doing business with the government. The proper management of procurement is considerably important because government activities in the procurement function involve the spending of public money. Any flaws in the execution of procurement activities may cause sizeable loss of public money through inefficiency, waste, fraud and corruption. The difference between public and private sector procurement is shown in the policy framework within which public sector procurement must be carried out.

This chapter focuses on the background of public sector procurement and BEE; and the instruments utilized to achieve BEE, viz., B-BBEE; BEE Advisory Council; balanced scorecard issued as code of good practice; procurement and its process; preferential procurement; e-procurement; supply chain management; contract management; performance management; Public-Private Partnerships (PPPs) and charters; and Small, Medium and Micro Enterprises (SMMEs) and finance for BEE.

2.2 BACKGROUND

According to the Department of Trade and Industry (b) (2008:6), the structural exclusion of black people from economic power began in the late 1800s with the first dispossession of land and continued throughout the 20th century with the first Mines and Works Act of 1911, and the Land Act of 1913. The raft of this systematic disempowerment not only

resulted in landless black majority with restricted access to skills development, but also deliberately prohibited black people from generating self-employment and entrepreneurship. Alexander (2008:2) states that in the decades before South Africa achieved democracy in 1994, the apartheid government systematically excluded Africans, Indians and Colored people – collectively known as “black people” – from meaningful participation in the country’s economy. This inevitably caused much poverty and suffering – and a profoundly sick economy. Whiteford (2005:4) points out that in April 1994, a newly elected black-majority government came to power in South Africa. This government inherited a society marked by inherent social and economic inequalities. In an effort to transform and address the intolerances of the past, BEE was enacted. First National Bank (2008:1) emphasizes that currently, BEE is a specific government policy to advance economic transformation in order to enhance the economic participation of black people.

Empowerment has undergone so many changes that it is necessary to analyze these perceptions into some sort of timeline to gain a better sense of how it is understood at present (Woolley, 2005:21). Generally, and in South Africa in particular, the concept “empowerment” is understood to mean economic enablement of groups from previously disadvantaged communities. Sometimes empowerment is even used synonymously with development (Khosa, 2001:424). BEE means creating space and opportunities for blacks to play their role in the economy (Whiteford, 2005:5). Accordingly, government defines BEE as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities (Department of Trade and Industry (b), 2008:12).

As stated in chapter 1, a Green Paper on Public Sector Procurement Reform in South Africa was published in April 1997. The Green Paper recognized that public sector procurement could be used by government as a mechanism to achieve black economic empowerment, local economic development spin-offs for small and medium sized

business, skills transfer and job creation. To achieve this, institutional and economic reform was necessary within two broad themes, namely, to establish principles of good governance in the area of supply chain management and to introduce a preference system to achieve certain socio-economic policy objectives (Department of Finance, 2003:11). The buying power of the state has increasingly been used as a source of promoting empowerment. By insisting on BEE ownership and other elements of empowerment from suppliers of goods and services to the state, the demand for BEE has intensified. Additionally, however, procurement has placed emphasis on empowerment ownership enhancing operational black business expertise, as opposed to reinforcing the passive investment approach that characterized the early empowerment transactions (Woolley, 2005:23).

2.3 INSTRUMENTS TO ACHIEVE BLACK ECONOMIC EMPOWERMENT

Government utilizes a number of policy instruments to achieve its objectives in respect of BEE. These include legislation and regulation, procurement, institutional support, financial and other incentive schemes. In addition, government seeks partnerships with the private sector to accelerate the BEE process (Department of Trade and Industry (b), 2008:14). The following sub-sections detail instruments utilized to achieve BEE.

2.3.1 Broad-Based Black Economic Empowerment

During the 1990s the so-called economic empowerment deals were characterized by limited multiplier effect in transmitting economic empowerment on a large scale. In view of this experience government embarked on a broad-based empowerment scheme (First National Bank, 2008:3). To define BEE broadly equates BEE with economic development and transformation in general. To define BEE narrowly limits it to a set of transactions transferring corporate assets from white to black ownership (Department of Trade and Industry (b), 2008:12).

Narrow-based BEE only evaluates ownership and control within an enterprise and does not require enterprises to undertake initiatives to promote BEE within their industries or through their suppliers and business partners. While B-BBEE mechanism aims to broaden the beneficiary base to include all black investors, management, employees, suppliers and communities, narrow-based BEE mechanisms limit their beneficiary base to those who have the necessary opportunity, experience and resources to acquire an equity stake or be appointed into senior managerial positions. Furthermore, narrow-based BEE mechanisms result in the prevalence of ‘fronting’ to circumvent the ownership and management requirements of BEE (Department of Trade and Industry, 2004:55).

Section 1 of the *Broad-Based Black Economic Empowerment Act 64 of 2003* defines “broad-based black economic empowerment” as the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies. First National Bank (2008:4) emphasizes that broad-based BEE is an explicit government policy aimed at redressing past economic imbalances. Moreover, BEE is an important policy instrument to broaden the economic base of the country, to stimulate economic growth, to create jobs while eradicating poverty. Section 1 of the *Broad-Based Black Economic Empowerment Act 64 of 2003* further defines “black people” as a generic term which means Africans, Coloreds and Indians. Mbola (2008:1) states that in a landmark decision, the Pretoria High Court ruled that South Africans of Chinese descent qualify for the full benefits of the country’s employment equity and black economic empowerment laws. Judge Cynthia Pretorius granted an order in terms of which Chinese South Africans are to be included in the definition of “black people”.

2.3.2 BEE Advisory Council

According to the Department of Trade and Industry (b) (2008:15), it is essential that black business is effectively represented on and participates in the various economic advisory bodies and councils that form part of South Africa’s institutions of social dialogue. In particular, a strong black business presence is needed in the National

Economic Development and Labor Council, the various Sector Education and Training Authorities, and the various Export Councils. Government supports initiatives in this regard. In addition, government is to establish a BEE Advisory Council to guide the implementation of the BEE strategy. First National Bank (2008:7) states that the Minister of Trade and Industry is responsible for the BEE Advisory Council. This body will advise the President in respect of BEE. In terms of section 5 of the *Broad-Based Black Economic Empowerment Act* 64 of 2003, the functions of the Council include, inter alia, the following; to:

- advise government on black economic empowerment;
- review progress in achieving black economic empowerment;
- advise on codes of good practice;
- advise on the development, amendment or replacement of the strategy for broad-based black economic empowerment;
- If requested to do so, advise on transformation charters; and
- facilitate partnerships between organs of state and the private sector which advance the objectives of this Act.

2.3.3 Balanced scorecard issued as Code of Good Practice

The Department of Trade and Industry (2007:4) states that a document titled *A Strategy for Broad-Based Black Economic Empowerment* was released in 2003. This document not only defined B-BBEE and the transformation imperative, but also outlined the first broad-based scorecard comprising the seven elements of B-BBEE. First National Bank (2008:6) emphasizes that ownership and control feature prominently in terms of weights. This means that BEE is an important redistribution policy instruments. This conclusion is becoming more evident if it is argued that skills development is a public good. The state is allocating private resources under BEE towards the production of a public good that should be delivered by the state. The seven elements and their respective weightings out of 100 are depicted below, as per the Generic Scorecard contained in the Codes:

Table 2.1: Generic Scorecard

ELEMENT	POINTS
Ownership	20
Management Control	10
Employment Equity	15
Skills Development	15
Preferential Procurement	20
Enterprise Development	15
Socio-Economic Development	5
TOTAL	100%

Adapted from Department of Trade and Industry (2007:4).

In terms of the B-BBEE strategy, government uses a 'balanced scorecard' to measure progress made by enterprises and sectors in achieving BEE. The scorecard measures three core elements, namely, direct empowerment, human resource development and employment equity, and indirect empowerment. The balanced scorecard also allows government departments, state-owned enterprises, other public agencies and private sector companies to align their own procurement practices and individual BEE strategies (Department of Trade and Industry, 2004:53). The three core elements measured by the scorecard are discussed next.

2.3.3.1 Direct empowerment

The process of BEE must result in an increase in the ownership and control of the economy by black people. This means that a significant proportion of black people ownership of assets and enterprises must be a controlling interest, reflecting genuine participation in decision-making at board, executive management and operations levels, and the assumption of real risk (Department of Trade and Industry (b), 2008:21). Direct empowerment refers to an increase in the ownership and control of the economy by black

people. Control means the right or the ability to control the majority of the votes attached to issued shares. It also means the right or ability to appoint or remove directors by the majority shareholder. Most importantly, it means the right to control management (First National Bank, 2008:4).

2.3.3.2 Human resource development

There is a desperate need to develop a broad base of skills in South Africa. Many South Africans are structurally marginalized as a consequence of a lack of basic skills training. There are a number of best practices that can provide solution to this problem, such as learnerships, mentoring, coaching and performance management (Woolley, 2005:69). South Africa has a training and education system with a number of serious shortcomings. In order to succeed in the process of rebuilding the economy, it is imperative that the various stakeholders – the private sector, the state, and the providers of education – interact to establish the composition of required skills (Grobler, Warnich, Carell, Elbert & Hatfield, 2006:328).

This component of the scorecard focuses on the development of the employees of an enterprise or sectors as well as employment equity. Enterprises are required to comply with the provisions of the Employment Equity Act 55 of 1998 to bring about an equitable representation of black persons in all occupations and at all levels of the organization over a period of time (Department of Trade and Industry, 2008:22). As further development in the government's overall human resource development strategy, two Acts, the Skills Development Act 97 of 1998 (SDA) and the Skills Development Levies Act 9 of 1999 (SDLA) were introduced (Grobler *et al.*, 2006:337).

2.3.3.3 Indirect empowerment

Woolley (2005:70) points out that there are two dimensions to indirect empowerment, namely, preferential procurement and enterprise development. For the purpose of this study, preferential procurement is dealt with as a separate item under the section on

procurement. First National Bank (2008:5) defines enterprise development as the investment in black-owned and black-empowered enterprises as well as joint ventures that result in substantial skill transfer. Department of Trade and Industry (b) (2008:22) indicates that enterprise development, as an element of indirect empowerment, can take two forms, viz., investment in black-owned and black-empowered enterprises; and joint ventures with black-owned and black-empowered enterprises. These two forms are detailed below.

- ***Investment in black-owned and black-empowered enterprises*** – The key elements to be taken into account when making these types of investment are that there must be real economic benefit flowing to the recipient enterprise to enable it to be set up and run on a sustainable basis; effectively there must be resultant operational capacity from the investment into the enterprise; and, there must be active participation by black people in the recipient enterprise.
- ***Joint ventures with black-owned and black-empowered enterprises*** – Joint ventures with black enterprises may involve processes such as outsourcing parts of the established enterprise's projects or jointly contracting for certain projects that will result in a transfer of skills to the black enterprise.

2.3.4 Procurement

Procurement is the acquisition of goods and services – other than the services of officials – for the people and their administration by means of commercial transactions. Public procurement refers to those government administrative activities that concern the purchasing of the goods and services the government needs from the private sector. These range from basic stationery requirements and other consumables through to mainframe computer systems, weapons systems and large public buildings (Pauw, Woods, Van Der Linde, Fourie & Visser, 2002:227). Procurement represents a wide-ranging function, and it is important as most expenditure occurs here. The focus is largely on stock management and warehousing, although directly linked to the accounting unit within a public institution concerned with purchases and payments (Visser & Erasmus, 2002:145). Government institutions spend taxpayer's money, and as a result, their procurement

practices are subject to close public scrutiny. Legislation pertinent to government procurement attempts to accomplish such things as the development of domestic and local businesses through local preference laws; the development of small and disadvantaged businesses; and the women-owned businesses (Heinritz, Farrell, Giunipero & Kolchin, 1991:451).

The procurement of goods and services has often been a dominant issue of both the financial controls and accounting records of government organizations. On the one hand, there has been an abundance of instructive rules covering all aspects of the actual purchase transactions. On the other hand, this dominance has not been expressed in much detail or sophistication in the accounting records of the individual organization. This meant that there has been little transparency and public accountability for government spending of public monies (Pauw *et al.*, 2002:228). The ten-point plan was approved by cabinet on 6 December 1995 and implemented within the framework of existing legislation, and among other things includes: a formula which awards preferences to SMMEs and previously disadvantaged individuals for contracts worth less than R2 million (Visser & Erasmus, 2002:149).

Coyle, Bardi and Langley Jr. (1996:73) emphasize that the procurement process is more than just the culmination of an activity; it is the successful completion of a series of activities that often cut across organizational boundaries. Procurement process consists of all those activities necessary to acquire goods and services consistent with user requirements. Visser and Erasmus (2002:158) further point out that a thorough knowledge of the different phases of the procurement process and the accounting procedures is, therefore, necessary to ensure that public officials procure goods and services timely and according to their requirements. These different phases and activities of the procurement process are examined in chapter 3.

2.3.4.1 Preferential procurement

In this dissertation, preferential procurement or affirmative procurement – the terms are used interchangeably – is the sourcing of goods and services from a targeted category of society with a view to equalizing market accessibility in order to ensure that they will not forever be excluded from playing a meaningful role in the economic mainstream. Preferential procurement is aimed at increasing the volumes of purchases from the targeted category of society, and the development and utilization of such enterprises (Woolley, 2005:70). In support of increased procurement by black-owned firms, government expanded its supplier development programs to ensure that more black enterprises are created and are able to meet the requirements of purchases in the public sector. The enabling legislation on BEE provides that all government departments, state-owned enterprises and public agencies take into account any code of practice issued in terms of the legislation in determining and implementing their preferential procurement policy (Department of Trade and Industry (b), 2008:15).

The key differentiation between preferential procurement and normal procurement practices is the consideration of the B-BBEE status of an enterprise as a preferential indicator in the identification, selection and retention of suppliers (Department of Trade and Industry, 2004:53). In South Africa, the majority of citizens have been excluded, before 1994, from the full benefit of the economic fruits of the country. The government must purchase public goods and services in a way that eradicates inequality. An example of an attempt to do this is the Preferential Procurement Policy Framework Act 5 of 2000 (Pauw *et al.*, 2002:242).

2.3.4.2 E-procurement

Ward (*in* Hugo *et al.*, 2002:281) defines e-procurement as the process by which goods and services are sourced electronically or, more specifically, online. This process goes beyond simply ordering goods and services online. E-procurement moves the current manual transaction-based environment to online environment, which enables the

realization of efficiencies in terms of time, accuracy of information and audit trails. Hugo, Badenhorst-Weiss and Van Biljon (2004:261) point out that e-procurement can be seen as a subset of SCM. It is more commonly used when large volumes of items of a generic nature, such as business consumables, standard raw materials or maintenance, repair and operating supplies are purchased on a regular basis (e.g. paper, pens, printer ink, metal pipes, screws and nails). Strategic purchases of highly customized product inputs, such as products purchased only very occasionally, are generally not suitable for e-procurement.

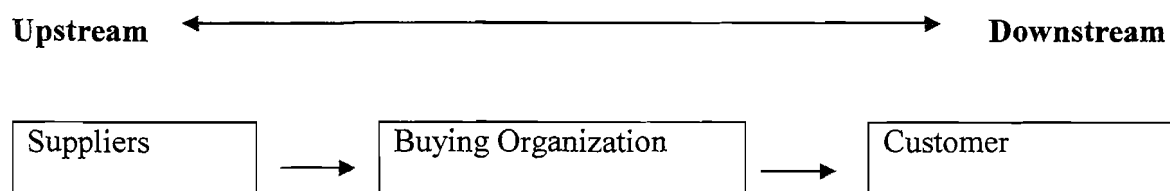
2.4 SUPPLY CHAIN MANAGEMENT

As indicated in chapter one, the National Treasury (a) (2004:2) states that in September 2003, Cabinet adopted a SCM policy to replace the outdated procurement and provisioning practices across government with a SCM function that is an integral part of financial management and conforms to international best practices. Hugo *et al.* (2004:10) indicate that supply chain management is a philosophy that evolved in response to the changes in the business environment, particularly during the 1990s. Cooper and Ellram (*in* Coyle *et al.*, 1996:9) define supply chain management as an integrating philosophy to manage the total flow of a distribution channel from supplier to ultimate customer.

Successful supply chain management is based upon the integration and management of three types of “flows” or basic processes product, information and cash. The three basic flows of product, information, and cash exist among the members of the channel (Coyle *et al.*, 1996:9). Supply chain management is about the linkage of the immediate seller / buyer relationship into a longer series of events. Supply chain management sees the various buyers and sellers as being part of a continuum, and recognizes the benefit to be derived from attempting to take a strategic and integrated view of the chain, rather than focusing on the individual links and thereby sub-optimizing (Baily, Farmer, Jessop & Jones, 1998:17).

Lyson (2000:68) points out that supply chain emphasizes the *process* approach concerned with how a product or service is delivered to the customer. This approach is based on the regulation that the customer is concerned that the required product or service is delivered at the right time and at the right place. Lyson (2000:68) further defines a *process* as a 'set of logically related tasks performed to achieve a defined outcome'. Baily *et al.* (1998:64) firmly state that purchasing and supply within organizations varies in terms of its state of development. The more advanced the activity, the more likely it is to be involved with both upstream and downstream activities. If organizations are concerned with adopting a World Class approach, and driving out unnecessary costs from the supply chain, they need to adopt flatter cross functional structures. Purchasing structures need to be far more flexible when dealing with both up and down stream activities. Figure 2.1 below illustrates upstream and downstream process of an organization.

Figure 2.1: Flatter cross functional structure of supply chain



Adapted from Baily *et al.* (1998:64).

According to the Department of Finance (2003:19), supply chain management seeks to breach the gap between traditional methods of procuring goods and services and the balance of the supply chain and at the same time addressing procurement related matters that are of strategic importance. The introduction of the principles of supply chain management requires of accounting authorities to extract accurate commercial and other relevant information, so as to effectively measure the achievement of government's procurement objectives.

2.5 CONTRACT MANAGEMENT

Wikipedia (2008:1) indicates that contract management or contract administration is the management of contracts made with customers, vendors, partners, or employees. Contract management includes negotiating the terms and conditions in contracts and ensuring compliance, as well as documenting and agreeing any changes that may arise during its implementation or execution. Baily *et al.* (1998:295) state that it is important to understand the various types of contract, and why they operate in relation to procurement practices. Broadly, the contracts referred to are: public supply contracts; public service contracts; and public works contracts. Firstly, public supply contract is for the purchase, lease or hire of goods and for installation of those goods. Secondly, a public service contract is when the purchaser engages a contractor (the service provider) to provide services. Thirdly, a public works contract is where the contract is for civil engineering or building works or where the contracting authority engages a person to carry out a work corresponding to specified requirements.

The Inter-American Development Bank (2008:10) emphasizes that all purchases must be made under a valid contract with a qualified supplier. A contract may be issued in the form of a purchase order, a blanket agreement, or a formal written contract document. A contracts specialist must coordinate the negotiation, finalization and issuance of any required contract; including obtaining signatures from appropriate authorized procurement official and the supplier.

2.6 PERFORMANCE MANAGEMENT

Performance management in procurement occurs in two different ways. Firstly, performance management occurs in the procurement function itself. Secondly, performance management is focused on contractor's performance. Kaydos (1999:1) points out that when managers don't have timely and meaningful feedback, companies fail to recognize opportunities and become much more vulnerable to hazards that can threaten their existence. The feedback provided by performance measures gives managers

better control over their areas of responsibility. With measures in place, deviations in performance are detected earlier, enabling managers to step in and minimize the damage or make the most of the opportunity.

Hugo *et al.* (2004:45) emphasize that performance management forms an important part of maintaining relationships in the SCM Unit or Department. Feedback on performance can be provided through formal and informal methods. Formal, annual reviews by top management focus on examining and updating strategic goals. More informal quarterly and monthly reviews by management focus on tracking and reviewing strategic goals and operational performance. These reviews enable changes to be made in operating practice in order to achieve strategic goals and create an avenue for continuous improvement.

According to Bowersox and Closs (*in* Hugo *et al.*, 2004:103), there are five key performance indicators (KPIs) for the measurement of supply chain performance. These are: customer satisfaction; time; cost; assets; and innovation. The five KPIs are discussed below.

- **Customer satisfaction.** It is not acceptable to give a second-best service if you want to remain profitable and retain market shares. Any inefficiency in the supply chain must be reduced or removed (Baily *et al.*, 1998:73). Customer satisfaction refers to the quality and acceptability of service received by the customer. This KPI can be measured in terms of perfect order fulfillment; product quality and level of customer satisfaction; delivery performance; process accuracy; forecasting accuracy; and budget planning accuracy (Bowersox & Closs *in* Hugo *et al.*, 2004:103).
- **Time.** Total supply chain time is measured as the time it takes from customer order to delivery, that is, end-to-end pipeline time. This is also known as total order cycle time. The more compressed and vertically coordinated the supply chain, the faster the material and information flow. This KPI can be measured in terms of supply chain response time; end-to-end pipeline time; order cycle time and production flexibility in terms of material; labor; and capacity (Hugo *et al.*, 2004:103).

- **Cost.** There is the cost of operation and the cost of materials to be considered before performance can be truly evaluated. The first factor, administrative cost is relatively manageable, since management science has developed standards and measures that can readily be applied. The second factor can be approached through the type of information included in purchasing department reports to management (Heinritz *et al.*, 1991:399). This KPI is measured in terms of total supply cost; finished goods inventory turns; total delivery costs (supplier to customer); costs of excess capacity; and costs of capacity shortages (Hugo *et al.*, 2004:104).
- **Assets.** The performance of supply chain assets such as inventory, equipment and capacity must be measured. Inventory performance is measured as the total number of supply chain inventory days whilst asset performance is measured in terms of utilization ratios. Total supply chain asset performance is the ratio of total sales to total assets (Hugo *et al.*, 2004:104).
- **Innovation.** The pace of change has quickened over the years. Organizations must be able to develop new practices quickly and effectively. This in turn requires significant improvements in the internal interface between purchasing on the one hand and, on the other, production, marketing, finance and so on, as well as with external suppliers and customers (Baily *et al.*, 1998:74). This KPI is measured in terms of new product technology introductions, new process technology development and strategic partnership development (Hugo *et al.*, 2004:104).

According to Hugo *et al.* (2004:48), traditionally suppliers were assessed using well-known methods such as the categorical plan and the weighted point method. The rationale behind these methods was to compare the performance of various suppliers and to an extent compare them with historical figures. The following are modern methods used in the SCM function:

- **Personal assessment.** Various specialists who have experience of the supplier (e.g. purchasing, operations, engineering, quality control) are asked to rate the supplier according to previously agreed checklist.

- **Supplier Audit.** This method entails that the supplier is visited periodically by specialists from the customer. The supplier's production process and quality organization are investigated thoroughly. Faults and weaknesses are reported and discussed with the supplier. Measures of improvement are negotiated and implemented. During subsequent visits checks are carried out to see to what extent progress against targets has been made.
- **Cost Modeling.** This method is used when an organization employs the total cost of ownership (TCO) method. A detailed analysis is made of the supplier's direct and indirect cost – material consumption, material prices, storage costs, waste, personnel costs, cost of supervising, overheads, etc. With the insight gained from this analysis, discussions are held with the supplier. These discussions frequently result in the supplier having to invest in manufacturing equipment. This usually deepens the commitment and relationship between the supplier and customer.

Finally, another crucial part of performance management is performance reporting. Hugo *et al.* (2004:111) state that reports can be grouped into the following four categories:

- **Status reports.** A status report informs management about the status of a particular activity or operation. Status reports can also provide information on finances and budgets, status of orders processed in warehouses and daily demand at retail level.
- **Exception reports.** As the name indicates, exception reports are only generated when an unexpected event, deviations from the plan or exception takes place. They act as early warning devices.
- **Ad hoc reports.** Management creates ad hoc reports to assist in policy making, performance reporting, and decision making and planning. These reports are customized to a particular business or type of activity. Ad hoc reports can be used for issues such as creating a common supply chain vision.
- **Trend reports.** Trend reports provide decision-makers with information on important internal and external trends. These reports can be generated periodically or on an ad hoc basis. Trend reports can deal with one or more of the following issues: daily demand patterns; inventory velocity; lead time variability; cost of materials and supplies; and order fulfillment rates.

2.7 PUBLIC-PRIVATE PARTNERSHIPS AND CHARTERS

Public-Private Partnerships (PPPs) are long-term contracts between the public and private sector. The main objective of PPPs all over the world is to ensure the delivery of well maintained, cost-effective public infrastructure or services, by leveraging private sector expertise and transferring risk to the private sector (Department of Trade and Industry, 2007:4). Municipalities around the world are faced with increasing demands for improved services, fiscal constraints and competition for resources. Many successful local authorities are responding to this challenge by exploring public-private partnerships. These partnerships are increasingly viewed as an important tool for meeting infrastructure and service needs in the face of limited resources (National Business Initiative, 1998:20).

In the evolvement of corporate BEE corporations, partnerships (e.g. equity, joint ventures, syndications or alliances) need to be developed and explored for strategic compatibility by design. Learning and internalization of skills from business partners are ingredients that fundamentally enhance the company's positioning through the development of competitive advantage. Hence the shifts towards synergy – that which is acknowledged to be what is sought out of a partnership in order to improve upon its competitive position (Whiteford, 2005:49). To simplify the above definition, Kay (*in* Whiteford, 2005:50) defines synergy as the sharing of know how (knowledge and skills), shared tangible resources, pooled negotiating power, coordinated strategies (seeking competitive advantage by aligning strategies of two or more partners), vertical integration and combined business creation. Whiteford (2005:50) emphasizes that with prescriptive BEE legislation, harmonious and synergistic evolvement in the formation of alliance or partnerships is a key determinant in the successful outcome of the future of BEE in South Africa.

First National Bank (2008:7) states that apart from legislation, regulation, preferential procurement, financial and institutional support, government seeks partnerships with the private sector to accelerate BEE. In this regard the private sector is interpreted very

broadly since it comprises private businesses, trade unions and community-based organizations. One could maintain that sectoral and enterprise based charters are a particular form of such partnerships. First National Bank (2008:7) further points out that charters define special mechanism through which a sector or enterprise achieves BEE. Government does not expect every sector and every firm to develop empowerment charters, but sectors and enterprises that are extensively conducting business with government are strongly encouraged to develop BEE charters.

Partnerships refer to structured collaboration between government and the private sector for the sustainable achievement of BEE. Government actively seeks the establishment of innovative partnerships with the private sector, built around the specific circumstances of different sectors and enterprises (Department of Trade and Industry (b), 2008:16). There are many different approaches that local authorities can take to build partnerships. These approaches vary in the degree and form of private participation. However, they all have the potential to make a positive contribution to public objectives by mobilizing private sector investment, achieving greater efficiency and creating cost savings (National Business Initiative, 1998:21). PPPs are being used increasingly widely to implement national and provincial government's infrastructure and service delivery commitment. Regulated by the relevant treasury in terms of Treasury Regulation 16 to the PFMA, PPPs offer valuable opportunities for strong and sustainable BEE (National Treasury (b), 2004:5). The next subsections address the following components of PPPs: approaches to PPPs, importance of PPPs for BEE, and the relevance of PPPs to municipalities.

2.7.1 Approaches to PPPs

The main approaches to PPPs, as proposed by the National Business Initiative (1998:21) include the following:

- **Service and Management Contracts** – With this option, the local authority enters into a service or management contract with the private sector to render a municipal service on its behalf. An example could be the rendering of a refuse service. The local

authority will pay a private contractor to collect refuse in terms of a service contract. Instead of purchasing additional trucks and related materials, the local authority appoints the contractor to undertake the service. It is important that performance factors and monitoring mechanisms are incorporated into these contracts so that the desired level of service is rendered.

- **Leasing** – A lease agreement is signed between the local authority and a private sector agency whereby the private sector agency pays a fee to the local authority to provide a service. The private sector agency renders the required service and is responsible for collecting income from users of the service.
- **Concession** – A private sector agency can be granted a concession to render a specific service for a long-term period. In terms of the concession, the private sector will use existing infrastructure but will have to develop it further. The private sector agency usually will be responsible for collecting income for the service.
- **Privatization** – Privatization means the complete transfer of ownership from the public to the private sector. Operation, maintenance and upgrading of infrastructure and facilities are the responsibility of the private firm as well as billing and debt collection. An example might be privatization of a stadium or arena which can be more profitable and efficiently run by private business.

2.7.2 The importance of PPPs for BEE

In the South African context, the promotion of BEE is another consideration for pursuing PPP procurement options. South African PPPs are structured to advance BEE, which is a key criterion in evaluating a private party's bid. Once the preferred bidder has been chosen and the project is under way, the private party has to meet the agreed BEE targets or risk paying penalties (National Treasury, 2007:10). The following are some good reasons for choosing a PPP:

- **Private sector skills** – In handing over certain responsibilities for a project, government is accessing a range of skills offered by the private party. These include all the skills required in the development or upgrading of infrastructure, project management skills, contract management skills, and, if a service is being procured, particularly service skills (National Treasury, 2007:11).
- **Special Purpose Vehicles (SPVs)** – The formation of private consortia in the form of special purpose vehicles for many PPPs facilitates long-term beneficial partnerships between new black enterprises and experienced, resourced companies (National Treasury (b), 2004:8).
- **Risk** – PPPs are designed so that risks are allocated to the party best able to manage them (National Treasury, 2007:11). Risk is clearly identified in PPPs, clearly costed and appropriately allocated (National Treasury (b), 2004:8).
- **Service provision** – In a PPP, government pays only when the private party starts to deliver the services. For example, if the private party is late, government does not pay, which means that the taxpayer does not carry the cost for a service that is not happening (National Treasury, 2007:12).
- **Local economic development** – PPPs have far-reaching broad-based BEE potential: through the subcontracting and procurement mechanisms they can involve a full spectrum of large, medium and small enterprises, and bring tangible local economic development benefits to targeted groups of people (National Treasury (b), 2004:8).

2.7.3 The relevance of PPPs to municipalities

According to the National Treasury (2007:14), the reasons to do PPPs at the municipal level are the same as for PPPs under national and provincial departments. In fact, PPPs can be even more valuable to municipalities because municipalities are charged with some of the most important levels of service delivery, such as the provision of clean

drinking water, waste water treatment, solid waste disposal, and electricity distribution. The provision of these types of services directly impacts on the quality of life of poor South Africans. PPPs, along with traditional procurement methods, can play a significant role in reducing the backlog in municipal service delivery. National Business Initiative (1998:20) states that whilst local government has the ultimate responsibility for ensuring that infrastructure and services are delivered, local authorities do not necessarily have to provide these services directly. However, it is necessary for local authorities to ensure that partnerships serve the public interest and guard against monopoly pricing, provide equitable access to services and prevent unfair labor practices. National Treasury (2007:14) further mentions that PPPs can be appropriate mechanisms in every area of responsibility for a municipality.

2.8 SMALL, MEDIUM AND MICRO ENTERPRISES (SMMEs) AND FINANCE FOR BEE

Berry, Von Blottnitz, Cassim, Kesper, Rajaratnam and Van Seventer (2002:34) indicate that the 1995 White Paper on National Strategy for the Development and Promotion of Small Business in South Africa has been the first major effort by the South African government to design a policy framework particularly targeting the entire spectrum of the small enterprise sector. The overall objective of the strategy was to create an enabling environment for SMME growth in the country as a way of addressing basic inequalities in the economy. The mechanisms for small business support outlined in the White Paper became constitutional through the National Small Business Act 102 of 1996 which also provides the comprehensive definition of SMMEs. Section 1 (xv) of the *National Small Business Act 102 of 1996* defines “small business” as a separate and distinct business entity, including co-operative enterprises and non-government organizations, managed by one or more which, including its branches or subsidiaries, if any, is predominantly carried on in any sector or sub-sector of the economy, and which can be classified as a micro-, a very small, a small or medium enterprise.

Scott (*in* Hugo *et al.*, 2002:331) mentions that there is an unhealthy concentration of economic power in the South African economy. One of the best ways of distributing this power more evenly, whilst retaining a competitive economy, is for those who currently dominate the economy to provide opportunities for fledging enterprises to do business with their larger counterparts. Visser and Erasmus (2002:148) state that government as the largest buyer in the country, is responsible for ensuring that procurement policy supports and attains overall economic objectives. A key element in government employment creation and income generation strategy is the promotion of SMMEs. The Department of Trade and Industry (2007:7) confirms that government has singled out small enterprises as vital in the fight for job creation and economic growth. According to the Small Enterprise Development Agency (SEDA), small enterprises already contribute approximately 35% of the country's gross domestic product (GDP) and employ over half the number of people who work in the private sector. Also, one out of five units exported from South Africa is said to have been produced in the small and medium business sector.

According to National Business Initiative (1998:8), several programs have been put in place to support small business by facilitating access to finance, training and development, research and information, markets and linkages, incentives and new technology. Whilst these national programs provide a valuable support base for SMME assistance, local authorities can help ensure that local business persons have access to these resources and are supported by an enabling local policy environment. Local authorities can achieve these objectives by using their resources to provide information, establish local business service centers, create a regulatory environment suitable for SMME development, reform tender processes and provide public facilities for small business incubators and other support projects. The next discussion is on the institutions that facilitate finance and support for BEE suppliers and SMMEs.

2.8.1 Ntsika Enterprise Promotion Agency

Berry *et al.* (2002:36) indicate that Ntsika provides non-financial support to SMMEs via a range of programs that are accessible through a network of retail service providers classified as:

- **Local Business Services Centers (LBSCs):** For assistance in business administration and general information.
- **Tender Advice Centers (TACs):** To provide assistance and training to SMMEs on government tendering process and information about current tenders.
- **Manufacturing Advice Centers (MACs):** These are coordinated and monitored by the Center for Science and Industrial Research (CSIR).

2.8.2 Khula Enterprise Finance Ltd

Khula has 13 regional offices across the country and provides finance, mentorship and capacity-building services to SMMEs. Khula is geared to assisting businesses in their early stages and with start-ups that need financing of between R10 000 and R3 million, but has a special emphasis on businesses that need start-ups of less than R250 000 (Radebe, 2008:14). Khula has initiated, since its establishment in 1996, a number of loan schemes to increase access to finance for SMMEs through Retail Financial Intermediaries (RFIs), which are SMME departments of commercial banks or accredited NGOs. RFIs apply their own minimum lending criteria (the most basic is the provision of a business plan) as the responsibility of risk assessment lies entirely with the RFIs. The schemes currently existent can be grouped as follows: Business Loan Scheme, Guarantee Schemes and Equity Funds (Berry *et al.*, 2002:37).

2.8.3 Provincial SMME Desks and One-stop centers

The provincial SMME desks main task is to link national or sectoral programs with local or regional implementation bodies and establish a comprehensive SMME database on which national policy changes can be based. Nevertheless, the capacity of these Desks

varies (Berry *et al.*, 2002:38). In addition to provincial SMME desks, National Business Initiative (1998:9) proposes one-stop centers. One-stop centers simplify the contracts that business needs to have with government by streamlining and expediting approval processes and other procedures. These centers can be staffed by trained officials from the local authority who are thoroughly familiar with the procedural requirements of the local authority to assist local businesses.

2.8.4 Black Business Supplier Development Program (BBSDP)

The BBSDP is an 80/20 cost-sharing grant, which offers support to black-owned enterprises in South Africa. The scheme provides such companies with access to business development services that assist them to improve their core competencies upgrade managerial capabilities and restructure their processes to become more competitive (Department of Trade and Industry (a), 2008:1). The main aim of BBSDP is to enhance the capacity of BEE suppliers to compete for tenders as stated in the above Department of Trade and Industry (DTI) document.

2.8.5 Industrial Development Corporation (IDC)

The IDC remains at the forefront of BEE by continuing to proactively seek opportunities aimed at creating an enabling environment for the empowerment process in order to yield high developmental and financial returns. Through the growing array of its BEE support initiatives the IDC is: endeavoring to partner with other role-players to facilitate empowerment investment within the mining sector; managing and disbursing funds from the European Investment Bank on funding for empowerment projects; and continuing its role of facilitating and financing empowerment projects in disadvantaged rural areas (Department of Trade and Industry (b), 2008:19). It is important to note that there are many objections to small business programs, such as difficulty of communication, high transaction costs, the lack of properly qualified small businesses conflicts with the generally accepted principles of efficient purchasing (Williams *in* Hugo *et al.*, 2002:338).

2.9 CONCLUSION

In the chapter, the context of public sector procurement and BEE was examined in detail. Emphasis was placed on: the background of public sector procurement and BEE; and different instruments used to achieve BEE, viz., B-BBEE; BEE Advisory Council and its functions; balanced scorecard issued as code of good practice; procurement and its process; preferential procurement; e-procurement; supply chain management; contract management; performance management; PPPs; and SMMEs, including agencies that facilitate finance for BEE. The next chapter focuses on the analysis of public sector procurement processes at Sedibeng District Municipality.

CHAPTER 3

ANALYSIS OF PUBLIC SECTOR PROCUREMENT PROCESSES AT SEDIBENG DISTRICT MUNICIPALITY

3.1 INTRODUCTION

Sedibeng District Municipality (SDM) is guided by its Supply Chain Management (SCM) Policy and Procedures Manual in the execution of procurement processes. The manual is intended to promote best practices in respect of SCM whilst attempting to ensure the efficient, effective and uniform planning for the procurement of all goods, services and works, required for the proper functioning of SDM. In this manner SDM intends to develop, support and promote Historically Disadvantaged Individuals (HDIs), Black Economic Empowerment (BEE), Small, Medium and Micro Enterprises (SMMEs), and preferential goals (socio-economic objectives).

In this chapter, SDM's procurement structures, policies, procedures and strategies are carefully examined. In line with the theoretical exposition given in chapter 2, chapter 3 focuses on the analysis and practical application of procurement processes at SDM. Areas of focus include: background; norms and standards of public procurement; five public sector procurement pillars; implementation of the B-BBEE; application of the balanced scorecard; the practice of preferential procurement; role-players in municipal procurement; execution of the tender process; structures to facilitate tender process; delegations; utilization of procurement methods; importance of contract management in procurement; enforcing performance in the procurement function; performance measurement in the procurement function; SMME participation and breakout procurement; PPP procurement; and combating corruption.

3.2 BACKGROUND

Sedibeng District Municipality Policy and Procedures Manual (2008:12) states that the SCM cycle encompasses activities associated with the flow and transformation of identified goods and services, ensuring that the end-user's needs are fulfilled. It integrates planning, sourcing and delivering, and synchronizes business processes by linking demand for goods and services to both the institution's strategic plan and its budget. The SDM's SCM objectives are: to obtain the optimum supply of goods and services from the market in terms of quality, timeliness, and cost; to minimize risk; to accomplish socio-economic objectives, including maximizing competition; and to maintain integrity.

According to the National Treasury (a) (2004:2), the new SCM arrangements promote uniformity in SCM processes and also in the interpretation of government's preferential procurement legislation and policies, which should themselves be seen in the context of other related legislative and policy requirements. Above all, these arrangements mean that responsibility and accountability for SCM-related function is devolved to accounting officers/authorities. Section 217 of the *Constitution of the 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 the national legislation, contracts for goods or services, it must do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

Section 111 of the *Municipal Finance Management Act* 56 of 2003 sets forth that each municipality and each municipal entity must have and implement a supply chain management policy. Regulation 2 (3) (a) of the *Municipal Supply Chain Management Regulations* (2005) provides that no municipality or municipal entity may act otherwise than in accordance with its supply chain management policy when procuring goods and services.

3.3 NORMS AND STANDARDS FOR THE PROCUREMENT SYSTEM

Sedibeng District Municipality Policy and Procedures Manual (2008:12) dictates that the accounting officer must develop and implement an effective and efficient SCM system for: the acquisition of goods and services; and the disposal and letting of state assets and goods no longer required. Section 76 (4) (c) of the *Public Finance Management Act* 1 of 1999 stipulates that the National Treasury may make regulations or issue instructions applicable to all institutions to which this Act applies concerning – the determination of a framework for an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. Against this background it is clear that the National Treasury is required to issue norms and standards to ensure uniformity and to monitor adherence thereto. The norms and standards for the proper procurement system are discussed below.

3.3.1 Fair and equitable

In dealing with suppliers and potential suppliers, institutions should: preserve the highest standards of honesty, integrity, impartiality and objectivity; be fair, efficient, firm and courteous; and achieve the highest professional standards in the awarding of contracts (National Treasury (a), 2004:20). All the prospective providers must be provided with the same information. Information relating to the bidding process must be kept confidential (Sedibeng District Municipality Policy and Procedures Manual, 2008:40). All received tenders are evaluated only against the written conditions, and only those tenders keeping strictly to the specifications are acceptable (Visser & Erasmus, 2002:160).

3.3.2 Transparency

The fact that all bids are advertised in the newspapers, electronic bulletin board, government-bid bulletin or local newspapers indicates transparency. Sedibeng District Municipality Policy and Procedures Manual (2008:39) states that bids are advertised in the media, this includes the media mentioned above. Advertisements are published in

English. According to Visser and Erasmus (2002:160), tenders must be opened in public – in the presence of at least two officers – immediately after the closure, and no late tenders may be accepted. On request, the prices of tenders are disclosed at the time of opening. Schiavo-Campo (1999:198) stresses that in the field of public financial management, transparency implies that the procedures and methods of decision making and disbursement of public funds are open and visible to all.

3.3.3 Competitive / cost-effectiveness

Abedian and Biggs (1998:477) point out that the efficiency with which public funds are used and the effectiveness of the government services which they finance are crucial issues in any economy. According to Dobler, Burt and Lee, Jr. (1990:613), every purchasing manager wants to achieve a high degree of buying effectiveness and, at the same time, utilize the department's resources as efficiently as possible. Too much emphasis on efficiency can easily decrease buying effectiveness. The challenge is to determine the optimal level of operating efficiency that still permits personnel to do a thorough, proficient job of buying. Sedibeng District Municipality Policy and Procedures Manual (2008:13) provides for the promotion of fiscal discipline associated with the procurement of goods and services.

3.4 PUBLIC SECTOR PROCUREMENT PILLARS

National Treasury (2008:3) stresses that proper and successful government procurement rests upon certain core principles of behavior – Five Pillars of Procurement. They are best described as pillars because if any one of them is broken the procurement system falls down. The next sub-sections detail these five pillars of procurement.

3.4.1 Value for money

In the supply chain management approach, all processes and activities are “re-engineered” to avoid wastage and optimize the value for the customer (Hugo *et al.*,

2002:52). The SDM endeavors through its Policy and Procedures Manual to obtain the best value for money when procuring goods and services. It also aims to reduce financial exposure and risk to all parties (Sedibeng District Municipality Policy and Procedures Manual, 2008:13). This is an essential test against which a department must justify a procurement outcome. Price alone is often not a reliable indicator and departments will not necessarily obtain the best value for money by accepting the lowest price offer that meets mandatory requirements. Best value for money means the best available outcome when all relevant costs and benefits over the procurement cycle are considered (National Treasury, 2008:4).

3.4.2 Open and effective competition

According to the National Treasury (2008:5), departments need to apply effort and research to get the best possible outcome from the market by ensuring that: potential suppliers have reasonable access to procurement opportunities; that available opportunities are notified at least in the Government Tender Bulletin; where market circumstances limit competition departments recognize that fact and use procurement methods that take account of it; adequate and timely information is provided to suppliers to enable them to bid; bias and favoritism are eliminated; the costs of bidding for opportunities do not deter competent suppliers; and costs incurred in promoting competition are at least commensurate with the benefits received. Sedibeng District Municipality Policy and Procedures Manual (2008:39) emphatically states that all prospective providers must be invited to submit bids by means of public advertisement in the media. The preference point system must be applied in the adjudication of bids. Furthermore, bid documents must be sold in line with the prescribed tariffs and the charge is non-refundable.

3.4.3 Ethics and fair dealing

Leenders and Fearon (1993:263) insist that temptation is always present where large amounts of money are involved. Suppliers go to considerable lengths to secure business

and resort to unethical practices, such as bribes or large gifts. Unscrupulous purchasers take advantage of their privileged position to extract personal rewards that are unethical as well as illegal. Clearly, both suppliers and purchasers are responsible for ensuring the unethical conduct is not tolerated.

Regulation 46 (2) of the *Municipal Supply Chain Management Regulations* (2005) states that a municipal code of ethical standards must stipulate that an official or other role player involved in the implementation of the supply chain management policy of the municipality or municipal entity: firstly, must treat all providers and potential providers equitably; secondly, may not use his or her position for private gain or to improperly benefit another person; and thirdly, may not accept any reward, gift, favor, hospitality or other benefit directly or indirectly, including to any close family member, partner or associate of that person.

Sedibeng District Municipality Policy and Procedures Manual (2008:13) declares that SCM is a particularly sensitive function in any organization as it involves temptation for self-enrichment, bribery, manipulation, and exchange of privileged information for money. Thus, opportunity for error exists in the application of individual judgment to ethical questions that may arise. In order to promote an environment of fair dealing and integrity, SDM requires that all the SCM practitioners, and other officials, adhere to its Code of Conduct.

Department of Finance (2003:34) concludes that in supply chain management, all parties are required to comply with the highest ethical standards to promote: mutual trust and respect; and an environment where business can be conducted in a fair and reasonable manner and with integrity.

3.4.4 Accountability and reporting

Accountability requires that those who hold position of public trust should account for their performance to the public. Accountability, therefore, implies that decision makers

are monitored by, and are responsible to, others, each of whom is, in turn, responsible to the people of the country. In respect of public financial management, there are at least independent and essential mechanisms through which accountability is enforced (Schiavo-Campo, 1999:201). One of the essential mechanisms through which accountability is enforced at the municipal level is the Auditor-General. The Auditor-General must audit the financial statements and reports of the municipality and submit the reports to the relevant minister and treasury. The reports indicate the accountability of deviations from the budget and the extent to which predetermined objectives were achieved (Visser & Erasmus, 2002:145).

SDM officials are accountable for their decisions and actions to the public. Officials are required to use public property scrupulously. Only the accounting officer / council or their delegates have the authority to commit the government to any transactions for the procurement of goods and services. All transactions conducted by an official should be recorded and accounted for in an appropriate accounting system (Sedibeng District Municipality Policy and Procedures Manual, 2008:108).

The manner in which accounting reflects financial information stems from the responsibility that the person entrusted with funds for a specific purpose has to account for the way in which their moneys have been applied and utilized (Visser & Erasmus, 2002:220). A primary purpose of public accountability is to prevent abuses of taxpayers' money. A secondary purpose is to let it be seen that abuses have been prevented (Baily *et al.*, 1998:290).

3.4.5 Equity

According to Sedibeng District Municipality Policy and Procedures Manual (2008:8), equity means the percentage of an enterprise owned by individuals or, in respect of a private company, the percentage of the company's shares that are owned by individuals. Individuals are actively involved in the management of the enterprise and exercise control over the enterprise, commensurate with their degree of ownership as at the

closing date of the bid. National Treasury (2008:8) states that this fifth pillar is vital to public sector procurement in South Africa. It ensures that government is committed to economic growth by implementing measures to support industry in general, and especially to advance the development of SMMEs and HDIs. No public procurement system should be operated if it is not founded on this pillar. Visser and Erasmus (2002:263) indicate that equity implies fairness, justice, and impartiality. Equity serves as a moral virtue, moderating and reforming the hardness of economic forces and acting as a yardstick for redressing existing mal-administration of income, economic development, and equal opportunities.

3.5 IMPLEMENTATION OF THE B-BBEE

Based on the emphasis that the participation of black people is a critical aspect of BEE, a clear picture emerges that tends to indicate that the B-BBEE legislation should be used as a tool to improve the competencies of historically disenfranchised individuals, develop training programs that meet specific needs of small enterprises, and generate skills necessary for the development of black women, rural, youth, cooperatives, disabled individuals and youth-owned businesses.

Section 2 of the *Broad-Based Black Economic Empowerment Act* 64 of 2003 sets forth the following objectives to facilitate B-BBEE:

- To promote transformation for meaningful economic participation of black people;
- To achieve a substantial change in the composition of ownership and management structures and in the skilled compositions of existing and new enterprises;
- To increase the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises;
- To promote investment programs that lead to broad-based and meaningful participation in the economy by black people;
- To empower rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skill; and
- To promote access to finance for black economic empowerment.

Sedibeng District Municipality Policy and Procedures Manual (2008:23) emphasizes that it shall establish and maintain a database of accredited prospective suppliers to be used effectively to promote B-BBEE and PPPFA. The SDM further stresses that the SCM unit must obtain the HDI equity and BEE/B-BBEE profile of the entity. Finally, the SDM maintains that when using the database, the accounting officer or his/her delegate must, among other things, promote the objectives of the PPPFA and B-BBEE Act.

3.6 APPLICATION OF THE BALANCED SCORECARD

It is self-evident that preferential procurement is not B-BBEE, but is just one element of B-BBEE. SDM emphasizes minimal preferential points, and largely price in the invitation and award of tenders.

Department of Trade and Industry (2004:53) states that government applies BEE criteria, as set out in the scorecard, when: contracting for goods or services or engaging in any specific regulated economic activity, for example, gambling or mining or entering into a PPP.

Section 10 of the *Broad-Based Black Economic Empowerment Act* 64 of 2003 endorses the above and stipulates that every organ of state and public entity must take into account and, as far as is reasonably possible, apply any relevant code of good practice issued in terms of this Act. The following is an example of how the codes can best be applied by municipal procuring authority.

Department of Trade and Industry (2007:10) sets forth the following example: The procurement officer of a public sector entity is considering a tender. Assuming that pricing, quality and other factors are similar across the three potential suppliers, the final decision will be based on BEE credentials. The BEE scorecards of three competing enterprises are as follows:

- **Company X:** with a BEE status in terms of the Generic Scorecard = 55%
- **Company Y:** with a BEE status in terms of the Generic Scorecard = 78%

- **Company Z:** a QSE (Qualifying Small Enterprise) black majority owned enterprise, with a BEE status in terms of the Generic Scorecard = 55%

It is important to note that SDM's Policy and Procedures Manual does not include the balanced scorecard as a procedure and tool to be followed when tender decisions are made. The table below depicts the enterprise weighting score per element (i.e. the score achieved after multiplying each indicator's raw score by the corresponding indicator weighting and summing the results for each element):

Table 3.1: Application of the balanced scorecard

ELEMENT	WEIGHTING	COMPANY X WEIGHTED SCORE	COMPANY Y WEIGHTED SCORE	COMPANY Z WEIGHTED SCORE
Ownership	20%	12%	18%	20%
Management Control	10%	5%	9%	10%
Employment Equity	15%	7%	8%	15%
Skills Development	15%	12%	15%	N/A
Preferential Procurement	20%	11%	12%	10%
Enterprise Development	15%	7%	12%	N/A
Socio-Economic Development	5%	1%	4%	N/A
TOTAL	100%	55%	78%	55%

Adapted from the Department of Trade and Industry (2007:11).

Based on the total weighting score per company the public procurement officer will award the tender to Company Y.

Although regulation 7 of the *Preferential Procurement Regulations* (2001) stipulates that an organ of state must, in the tender documents, indicate the preference point system which will be applied in the adjudication of tenders, the balanced scorecard is not completely incorporated into the 90/10 or 80/20 point systems. It is only preferential procurement, as an element of the balanced scorecard that is incorporated in the 90/10 and 80/20 preferential procurement practice or formula. These 90/10 and 80/20 practices are detailed below.

3.7 THE PRACTICE OF PREFERENTIAL PROCUREMENT

In terms of section 2 (1) of the *Preferential Procurement Policy Framework Act* 5 of 2000, an organ of state must determine its preferential policy and implement it within the following framework:

- 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; and
- 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.

Sedibeng District Municipality Policy and Procedures Manual (2008:29) dictates that the bid specification committee must ensure that the preferential points system is implemented in the following manner:

Table 3.2: Allocation of preferential points

Targeted Groups	80/20	90/10
Blacks	5.00	2.50
Women	4.00	2.00
Youth	4.00	2.00
Disability	2.00	1.00
SMME	2.00	1.00
Local Business	3.00	1.50
Total	20.00	10.00

Adapted from Sedibeng District Municipality Policy and Procedures Manual (2008:30).

Section 2 (2) of the *Preferential Procurement Policy Framework Act* 5 of 2000 stipulates that specific goals must be measurable, quantifiable and monitored for compliance. Regulation 17 (3) of the *Preferential Procurement Regulations* (2001) states that over and above the awarding of preference points in favor of HDIs, the following activities may be regarded as a contribution towards achieving the goals of the RDP (published in *Government Gazette* No. 16085 dated 23 November 1994):

- The promotion of South African owned enterprises;
- The promotion of export oriented production to create jobs;
- The promotion of SMMEs;
- The creation of new jobs or the intensification of labor absorption;
- The promotion of enterprises located in a specific municipal area;
- The promotion of enterprises located in rural areas;
- The development of human resources, including by assisting with training programs;
- The development of communities through, but not limited to housing, transport, schools, infrastructure donations, and charity organizations.

Regulation 3 (1) of the *Preferential Procurement Regulations* (2001) states that the following formula must be used to calculate the points for price in respect of tenders / procurement with a Rand value equal to, or above R30 000 and up to a Rand value of R500 000. Organs of state may, however, apply this formula for procurement with a value less than R30 000, if and when appropriate:

$$P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where

P_s = Points scored for price of tender under consideration

P_t = Rand value of tender under consideration

P_{min} = Rand value of lowest acceptable tender

- A maximum of 20 points may be awarded to a bidder for being an HDI/or subcontracting with an HDI and/or achieving any of the specified goals mentioned above;
- The points scored by a bidder in respect of the goals must be added to the point scored for price; and
- Only the tender with the highest number of points scored may be selected.

In short, Visser and Erasmus (2002:150) state that the calculation, using a prescribed formula, is based on the tender prices in relation to the lowest acceptable tender. The contract is then awarded to the bidder scoring the highest points, unless objective criteria justify otherwise.

It is important to note here that the formula for 90/10 is similar to the one outlined above. The difference only occurs when the price requirement is increased to 90 points and the specified goals reduced to 10 points.

3.8 ROLE-PLAYERS IN MUNICIPAL PROCUREMENT

Key role-players in municipal procurement include the National Treasury, provincial treasuries and treasury offices; accounting officers; other officials; chief procurement officers; and end-users / user departments. The roles of these key participants in municipal procurement are related below.

3.8.1 National Treasury, provincial treasuries and treasury offices

Section 216 (1) of the *Constitution of the Republic of South Africa* 1996 stipulates that national legislation must establish a National Treasury and prescribe measures to ensure both transparency and expenditure control in each sphere of government, by introducing – generally recognized accounting practice; uniform expenditure classifications; and uniform treasury norms and standards.

According to the National Treasury (a) (2004:18), the National Treasury issues a limited number of practice notes in terms of the framework to guide uniformity in practices and procedures in the different spheres of government whilst provincial treasuries issue further practice notes in a cascading fashion to guide the more detailed implementation of SCM functions. A SCM Office in the National Treasury oversees the implementation of the SCM policy, in conjunction with provincial treasuries.

In terms of section 80 of the *Municipal Finance Management Act* 56 of 2003, every municipality must have a budget and treasury office. A budget and treasury office consists of – a chief financial officer designated by the accounting officer of the municipality; officials of the municipality allocated by the accounting officer to the chief financial officer; and any other person contracted by the municipality for the work of the office. The role of accounting officer is clarified next.

3.8.2 Accounting officer

Regulation 3 (4) of the *Municipal Supply Chain Management Regulations* (2005) stipulates that the accounting officer of a municipality must in terms of section 62 (1) (f) (iv) of the *Municipal Finance Management Act* 56 of 2003, and the accounting officer of municipal entity must in terms of section 99 (2) (h) of the same Act, take all reasonable steps to ensure that the municipality or municipal entity has and implements a supply chain management policy. Sedibeng District Municipality Policy and Procedures Manual (2008:12) emphasizes that the accounting officer must develop and implement an effective and efficient SCM system for: the acquisition of goods and services; and the disposal and letting of state assets and goods no longer required.

Department of Finance (2003:35) indicates that in terms of section 36 of MFMA, accounting officers are fully responsible and should be held accountable for any expenditures relating to supply chain management within their line of responsibility. Any expenditure incurred in this regard should be subject to appropriate regulations and accounting officers' / authorities' directives and procedures.

3.8.3 Other officials

Section 45 of the *Public Finance Management Act* 1 of 1999 firmly states that an official in a department, trading entity or constitutional institution is in charge of the following: must ensure that the system of financial management and internal control established for that constitutional institution is carried out within the area of responsibility of that official; is responsible for the effective, efficient, economical and transparent use of financial and other resources within that officials area of responsibility; must take effective and appropriate steps to prevent, within that official's area of responsibility, any unauthorized expenditure, irregular expenditure and fruitless and wasteful expenditure; must comply with any delegations and instructions in terms of section 41 of this Act; and is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.

The role of SCM officials in the SDM's procurement of goods and services through tendering appears to be overshadowed by bid committees' roles. The SCM Unit's role is truly limited, for instance, Sedibeng District Municipality Policy and Procedures Manual (2008:61) states that the SCM Unit is required to present the recommendation report of the relevant evaluation committee to the adjudication committee for consideration.

3.8.4 Chief Procurement Officer/Director

Sedibeng District Municipality Policy and Procedures Manual (2008:32) emphasizes that the Head of SCM Unit must be part of the bid adjudication committee only as an observer. Against this background it is apparent that the role of the procurement unit and its Head is limited to facilitating the procurement process, rather than making major procurement decisions. Furthermore, it appears that the only way in which the senior procurement officer plays a decisive role in the procurement process is when delegated to make decisions by the accounting officer or the chief financial officer.

Barrett (b) (2008:24) argues that chief procurement officers must drive fundamental changes. They must push for greater empowerment. Chief procurement officers must ensure that their teams understand and have access to the economic data necessary to evaluate true cost of ownership or operation allowing them to move beyond narrow price-based assessments. Procurement must take ownership of outcomes – and that means remaining involved throughout the relationship lifecycle. Chief procurement officers must find analysts, investigators, staff who are interested in openness and transparency, who can hold intelligent discussions with suppliers about risk and how best to mitigate, control or reduce its probability of occurrence. The conclusion is that procurement must engage with the market.

3.8.5 End-User

Strydom (2004: xii) defines end-user as the person or department that is responsible for utilizing or consuming the service or products purchased by the procurement department.

Sedibeng District Municipality Policy and Procedures Manual (2008:31) states that the director of the user department must be part of the Bid Evaluation Committee (BEC). This is the committee that evaluates the capacity of the bidder to render service or deliver the required goods.

3.9 DELEGATION

It is evident that the accounting officer cannot run the procurement process and other municipal functions alone. The alternative way of efficiently executing responsibilities associated with procurement, is to allow procurement specialists employed by the municipality to deal with this critical function. However, at the municipal level the accounting officer remains in charge of this function and other officials are simply delegated to perform procurement functions. It is not yet known to what extent this delegation system hampers the efficient and effective procurement of goods and services.

Section 44 (1) of the *Public Finance Management Act 1 of 1999* stipulates that the accounting officer for a department, trading entity or constitutional institution may – in writing delegate any of the powers entrusted or delegated to the accounting officer in terms of this Act, to officials in that department, trading entity or constitutional institution to perform any of the duties assigned to the accounting officer. Sedibeng District Municipality Policy and Procedures Manual (2008:17) states that the accounting officer of a municipality – must, for the proper application of the *Municipal Finance Management Act 56 of 2003* in the municipality's administration, develop an appropriate system of delegation that maximizes administrative and operational efficiency and provide adequate checks and balances in the municipality's top management or duties assigned to an accounting officer. The accounting officer may not delegate to any political structure or political office-bearer of the municipality, any of the powers or duties assigned to him / her. All delegations must be in writing.

In practice, all delegations in the public sector must have a statutory origin, otherwise they would be illegal. The rule *delegatus delegare non potest* applies here. In simple

language this basic rule means that a delegate may not delegate its delegated functions and powers to someone else, unless the delegator has been allowed to do so by the original authority (Gildenhuys, 1997:79).

Part of section 106 (1) of the *Municipal Finance Management Act* 56 of 2003 dictates that the accounting officer must regularly review delegations issued and, if necessary, amend or withdraw any of those delegations.

3.10 EXECUTION OF THE TENDER PROCESS

Tendering is a purchase procedure whereby potential suppliers are invited to make a firm and unequivocal offer of the price and terms which, on acceptance, shall be the basis of the subsequent contract (Lyson, 2000:404). A thorough knowledge and implementation of the different phases of the tendering process and the accounting procedures is, therefore, necessary to ensure that public officials procure goods and services timely and according to their requirements (Visser & Erasmus, 2002:158). For the purpose of this study tendering or bidding should be understood to mean proposing and competing with fellow bidders to offer or supply a service or product for a reasonable price and stated specifications. Different phases of the tender process, bid structures, utilization of procurement methods, and the management of procured contracts, as applied at the SDM, are examined below.

Phase 1: Invitation of bids – Sedibeng District Municipality Policy and Procedures Manual (2008:39) indicates that the prospective bidders are invited to bid by means of public advertisement in the media, including the Government Tender Bulletin. The advert must contain information regarding details of service required, bid number, closing date and time, cost of bid document, and briefing sessions. Regulation 22 (1) of the *Municipal Supply Chain Management Regulations* (2005) regulates that a supply chain management policy must determine the procedure for the invitation of competitive bids, and must stipulate – that any invitation to prospective providers to submit bids be by means of a public advertisement in newspapers commonly circulating locally, the website of the

municipality or municipal entity or any other appropriate ways (which may include an advertisement in the Government Tender Bulletin). According to Visser and Erasmus (2002:160), apart from advertising, tender documents can also be sent to identified possible suppliers.

Phase 2: Briefing prospective suppliers – Site meetings must be conducted at the advertised location and at the specified time. An attendance register must be circulated and signed by all prospective providers who are present. The attendance register must contain the following information: details of the bid, for example, name of service and bid number; name of meeting venue; meeting time, name of attendee; position; represented entity; contract number; telephone, fax and e-mail address; and signature of the attendee. SCM Unit must take minutes whenever briefing or site meetings are held (Sedibeng District Municipality Policy and Procedures Manual, 2008:41).

Phase 3: Bid opening and evaluation – Section 118 (b) of the *Municipal Finance Management Act* 56 of 2003 states that no person may amend or tamper with any tenders, quotations, contracts or bids after they have been submitted. Regulation 23 of the *Municipal Supply Chain Management Regulations* (2005) regulates that bids may be opened only in public, and must be opened at the same time and as soon as possible after the period for the submission of bids has expired. Sedibeng District Municipality Policy and Procedures Manual (2008:41) points out that a fair and transparent process must be followed for the closing, receiving, opening and processing of quotations. Bid box procedures may be used where the circumstances so require. Quotations received by post, courier or electronic means should be administratively dealt with and immediately be channeled to the physical address where quotations are received.

Leenders and Fearon (1993:543) emphasize that at the hour and date specified in the bid instructions, the buyer must open all bids and record the bids on some type of a bidder spreadsheet. The buyer must call out the supplier name and bid, and clerk records information, checks the actual bid form for the amount, and then certifies that the information on the spreadsheet is correct. Any citizen who wishes normally can attend

the bid opening and examine any of the bids. Often suppliers who have submitted bids, or ones who have chosen not to bid but who wish to see the bids of other suppliers, will attend the opening. After the bids are recorded, the original bids should be retained for later inspection by any interested party for a specified time period.

Phase 4: Acceptance of bid – The officials delegated for the adjudication function, must finalize the award and any decision regarding the adjudication and award of a contract is final. Once approval has been granted, the SCM Unit must commence with the notification process. The Legal and Support Department should prepare the contractual documentation (Sedibeng District Municipality Policy and Procedures Manual, 2008:61). The organization approving acceptance of the tender must issue the letter of acceptance on behalf of the relevant public institution. These letters are the basis for placement of orders, administration of contracts, and settlement of disputes. Formal contracts are then signed by the official, so designated, on behalf of a public institution (Visser & Erasmus, 2002:161). Typically, a bid analysis sheet is used to array the bids of all suppliers and the particulars of each bid. But after the bids have been submitted and compared, which should be selected? The lowest bid customarily is accepted. The objective of securing bids from various sources is to obtain the lowest price. Government contracts must be awarded to lowest bidder unless very special reasons can be shown for not doing so (Leenders & Fearon, 1993:311).

Phase 5: Debriefing unsuccessful bidders – Once the successful bidder has been advised of the award, the SCM Unit informs unsuccessful bidders in writing that their bids were unsuccessful and no reason should be provided. Any bidder must be provided with the reasons why the bid was unsuccessful only on the bidder's written request. Thus, based on request, each bidder is entitled to feedback concerning its own bid. It is, therefore, imperative that proper reasons are recorded in the minutes of the bid evaluation committee and bid adjudication committee to enable SCM to provide the bidder with justifiable reasons (Sedibeng District Municipality Policy and Procedures Manual, 2008:63). Debriefing candidates not selected for a bid list and unsuccessful bidders is highly recommended across all procurement functions in different organizations.

3.10.1 Structures to facilitate the bidding process

The bidding process is facilitated by bid committees. There are three different types of bid committees, namely, bid specification committee, bid evaluation committee and bid adjudication committee. Section 117 of the *Municipal Finance Management Act 56 of 2003* stipulates that no councilor of any municipality may be a member of a municipal bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any such meeting as an observer. The next discussion focuses on different bid committees.

3.10.1.1 Bid Specification Committee (BSC)

In terms of regulation 27 (3) of the *Municipal Supply Chain Management Regulations* (2005), a bid specification committee must be composed of the manager responsible for the function involved, and may, when appropriate, include external specialist advisors. Sub-regulation 4 of the same regulation state that no person, advisor or corporate entity involved with the bid specification committee, or director of such a corporate entity, may bid for any resulting contracts. Sedibeng District Municipality Policy and Procedures Manual (2008:30) states that the BSC consists of SCM officials, namely: Demand Management; Manager – User Cluster; Budget Officer; and External specialist advisors, when appropriate.

Baily *et al.* (1998:92) differentiates between performance and conformance specifications. Performance specifications provide a clear indication of the purpose, function, application and performance expected of the supplied material or service. Conformance specifications refer to specifications where the buying organization lays down clear and unambiguous requirements that must be met. The specification is of the product, not the application. Sedibeng District Municipality Policy and Procedures Manual (2008:29) states that the BSC must compile specifications for any procurement of goods or services. SDM appears to be applying both performance and conformance specifications.

3.10.1.2 Bid Evaluation Committee (BEC)

According to Visser and Erasmus (2002:160), any person involved in the evaluation of a tender may not be part of the adjudication panel. Regulation 28 (2) of the *Municipal Supply Chain Management Regulations* (2005) states that a BEC must as far as possible be composed of officials from departments requiring the goods or services; and at least one supply chain management practitioner of the municipality or municipal entity. Sedibeng District Municipality Policy and Procedures Manual (2008:31) points out that the BEC must consist of at least 3 members and as far as possible be composed of the following: Head of SCM Unit; Director – User Department; Director – Financial Management and Budget; Legal Advisor; Director – IGR; Manager – Internal Audit; and External specialist advisors, when appropriate.

Visser and Erasmus (2002:160) indicate that the recommendation of the committee must be based on the conditions, specifications, and criteria contained in the tender invitation. Minutes of all the decisions of the committee must be kept and forwarded to the administrative component of the body responsible. Sedibeng District Municipality Policy and Procedures Manual (2008:30) mentions that the BEC, as set out in terms of regulation 27 (2) (f) and as prescribed in terms of the PPPFA, evaluate bids in accordance with the specifications and the point system. The BEC must also evaluate the bidder's ability to execute the contract. Finally, the BEC must submit to the adjudication committee a report, and recommendations regarding the award of the bid or any other related matter.

3.10.1.3 Bid Adjudication Committee (BAC)

Regulation 29 (2) of the *Municipal Supply Chain Management Regulations* (2005) provides that a bid adjudication committee must consist of at least four senior managers of the municipality or municipal entity which must include – the chief financial officer; at least one senior supply chain management practitioner who is an official of the

municipality or municipal entity; and a technical expert in the relevant field who is an official of the municipality or municipal entity.

Regulation 29 (1) of the *Municipal Supply Chain Management Regulations* (2005) regulates that a bid adjudication committee must – (a) consider the report and recommendations of the bid evaluation committee; and (b) either – (i) depending on its mandate, make a final award or a recommendation to the accounting officer to make the final award; or (ii) make another recommendation to the accounting officer how to proceed with the relevant procurement. Sedibeng District Municipality Policy and Procedures Manual (2008:31) further adds to the above responsibilities of BAC, that the BAC may require clarity from the BEC and that BAC must assess if the process followed to make recommendations adheres to SCM policy.

3.10.2 Utilization of different procurement methods

The existing procurement methods include competitive bidding, two-stage bidding, urgent and emergency procurement, unsolicited bids and quotations (National Treasury (a), 2004:29). The application of these procurement methods is detailed below.

3.10.2.1 Competitive bidding

Regulation 19 of the *Municipal Supply Chain Management Regulations* (2005) stipulates that a supply chain management policy must specify: firstly, that goods or services above a transaction value of R200 000 (VAT included) and long term contracts may be procured by the municipality or municipal entity only through a competitive bidding process; and secondly, that no requirement for goods or services above an estimated transaction value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value merely for the sake of procuring the goods or services otherwise than through a competitive bidding process. Sedibeng District Municipality Policy and Procedures Manual (2008:22) states that competitive bidding process must be followed when the procurement threshold value is above R200 000 (VAT included), and for long-

term contracts. However, exceptions may be permitted but must only be approved by the accounting officer. For instance, the lowering of the above threshold value and not increase may be implemented.

Dobler *et al.* (1990:204) mention that when competitive bidding is used, government buyers generally are not able to restrict the number of bidders. Rather, all suppliers desiring to bid are permitted to do so (for large purchases, the numbers are literally in the hundreds). By law, government buyers are routinely required to award the contract to the lowest bidder, provided the lowest bidder is deemed qualified to perform the contract. Burt (1984:111) indicates that to employ the competitive bidding procedure successfully, the procuring authority must ensure that certain prerequisites are met: for example, the specifications for the item or service required are met; the amount of money involved is sufficient to warrant use of competitive bidding; adequate competition must be present; and there is sufficient time available to employ this technique of source selection.

3.10.2.2 Two-stage bidding

Regulation 25 (1) of the *Municipal Supply Chain Management Regulations* (2005) states that supply chain management policy may allow a two-stage bidding process for: large complex projects; projects where it may be undesirable to prepare complete detailed technical specifications; or long-term projects with a duration period exceeding three years. Sedibeng District Municipality Policy and Procedures Manual (2008:36) indicates that in the first stage, technical proposals are invited on conceptual design or performance specifications. These are done subject to technical as well as commercial clarifications and adjustments. In the second stage, final technical proposals and priced bids are invited. This ensures that invitations to bid are extended only to those who have adequate capabilities and resources. Pre-qualification is based entirely upon the capability and resources of prospective providers to perform the particular contract satisfactorily.

3.10.2.3 Urgent and emergency procurement

According to Sedibeng District Municipality Policy and Procedures Manual (2008:59), irrespective of monetary value, an urgent procurement process only applies where early delivery is of critical importance and the utilization of the standard procurement process is either impossible, or impractical. In this case, the SDM may dispense with the invitation of bids and may obtain the requirement by means of quotations, preferably making use of the database of prospective providers per commodity or otherwise in any manner to the best interest of SDM. The nature of the urgency and the details of the justifiable procurement process followed must be recorded and reported. However, it should be noted that poor planning by departments does not qualify to be an emergency.

The Inter-American Development Bank (2008:8) states that an emergency condition creates an immediate need for goods or services that cannot be met through normal procurement sourcing methods. If at all possible, prior to initiation of an emergency procurement, the user department must submit a purchase requisition for the goods or services needed with a full explanation in writing of the circumstances necessitating the emergency procurement. Where time or circumstances preclude submission of written documentation, the user department must obtain verbal permission to proceed with the emergency procurement. The written documentation required (purchase requisition and justification) must be submitted by whatever means practicable as soon as possible thereafter. Lack of time is not justifiable for emergency procurement.

3.10.2.4 Unsolicited bids

SDM acknowledges in its *Second Quarterly Report for the Period: 10 October 2007 to 10 April 2008* that the SCM policy lacks a procedure that must be followed when dealing with an unsolicited bid. It appears an attempt is made to rectify the situation, since Sedibeng District Municipality Policy and Procedures Manual (2008:60), in its current Policy and Procedures Manual states that in terms of section 113 of the *Municipal Finance Management Act 56 of 2003*, SDM is not obliged to consider unsolicited bids

received outside a normal bidding process. However, if SDM decides to consider unsolicited bids, it may do so only if: firstly, the product or service offered in terms of the bids is proven to be a unique innovative concept; secondly, the product or service is exceptionally beneficial to or have exceptional cost advantages for SDM; thirdly, the person who made the bid is the sole provider of the product or service; and fourthly, the reasons for not going through the normal bidding processes are found to be sound by the accounting officer.

The Inter-American Development Bank (2008:7) points out that a non-competitive / sole-source or unsolicited bid means that there is only one possible supplier for the goods or services for one of the following reasons:

- No other supplier for the product or service exists;
- The supplier has exclusive geographical or other distribution rights for the product or service; and
- The item is a replacement or add-on component of proprietary commercial software or hardware that is available only from its manufacturer.

Single-source procurement means that a particular supplier should be selected without competition.

3.10.2.5 Quotations

Sedibeng District Municipality Policy and Procedures Manual (2008:27) asserts that where the value of the goods and services is more than R800 (VAT included) but less than R10 000 (VAT included), three written quotations must be obtained from accredited prospective providers in the relevant commodity, as selected from the database. For the acquisition of goods and services between R10 000 and R30 000 (VAT included), goods and services must be procured by inviting formal written price quotations from as many as possible providers on the database of accredited prospective providers. The chief financial officer or delegate must record the names of the potential suppliers and their written quotations. The Head of SCM Unit must, within three working days of the end of each month, report to the CFO and accounting officer on any approvals given during that

month. Hugo, Van Rooyen and Badenhorst (1997:141) emphatically state that quotations are sent to buyers on request, and usually refer to products manufactured according to the buyer's specifications. Supplier's representatives often assist in the analysis and interpretation of such quotations, thus serving as supplementary sources of information. The price which a supplier quotes for requirements determines the buyer's costs and ultimately the profitability of his or her enterprise. The point of departure should be the best value at the lowest price. If a supplier quotes a fixed price, it may be an indication that he or she is prepared to absorb certain price hikes.

3.10.3 Importance of contract management in procurement

The Sedibeng District Municipality Quarterly Report (2008:5) admits that there are no effective monitoring mechanisms to ensure that a contract or agreement procured through SCM policy is properly enforced. The report further concedes that there are also no measures in place to ensure regular monitoring of the contract performance under agreement. SDM's new Policy and Procedures Manual seems to make adjustments concerning contract management, however, the effectiveness of these restorative measures needs to be tested.

Sedibeng District Municipality Policy and Procedures Manual (2008:67) states that contract management is the last stage of the acquisition process, and includes all administrative duties associated with initiation, performance, monitoring and conclusion of a contract. Contract management includes the following: all dealings between SDM and the contractor from the time the contract is awarded until the work has been completed and accepted or the termination of the contract, payment, and resolution of any disputes. The SCM Unit and the specific user department must perform a periodic review of long-term contracts once every 3 years in the case of a contract or agreement for longer than 3 years and report accordingly.

Barrett (a) (2008:1) draws attention to the fact that a study by Aberdeen Group and GCN found that creating, managing and controlling compliance to supplier contracts were the

biggest challenges faced by organizations in the public sector and is having an adverse effect on the breadth and quality of government services. In light of the emerging state of supply chain management operations in the public sector, it is safe to say that the government is losing billions through mismanaged contracts each year. Further to this, poor contract management is hampering efforts to monitor the delivery performance of contracted services and products.

3.11 ENFORCING PERFORMANCE IN THE PROCUREMENT FUNCTION

Sedibeng District Municipality Policy and Procedures Manual (2008:104) states that supply chain performance is a monitoring process during which a retrospective analysis is undertaken to determine whether the prescribed SCM processes are being followed and whether the desired are achieved. The following are two areas which SDM monitors: firstly, SCM policy and processes – a performance management system must be developed to measure and monitor the SCM policy and process and ascertain whether government's objectives and targets are achieved; and secondly, provider's performance – the performance management system also requires that all contractors' performance must be monitored and assessed during the contract period.

Moreover, Sedibeng District Municipality Policy and Procedures Manual (2008:104) points out that the performance measurement system accordingly focuses on:

- measuring performance in terms of achievement of SDM goals;
- measuring compliance with norms and standards;
- determining savings generated; determining cost variance for items to indicate the premium paid for promoting preferential objectives;
- determining cost efficiency of the acquisition process;
- determining whether SCM objectives are consistent with government's broader policy focus;
- determining whether the principles of co-operative governance as expounded in the Constitution 1996 are observed;
- evaluating whether the reduction of regional economic disparities is promoted;

- establishing any non-compliance with contractual conditions and requirements; and
- assessing the efficiency of stores.

According to the above-mentioned aspects of focus, it is noticeable that there is an endeavor to measure supply chain performance at the SDM. The problem is, however, that there are no tools included in the SDM's Policy and Procedures Manual that indicate how the municipality intends to achieve these aspects of focus.

3.11.1 Performance measurement in the procurement function

Sedibeng District Municipality Policy and Procedures Manual (2008:105) states that the performance of all contractors must be assessed during the period of the contract. At the completion stage of the contract, an assessment must be undertaken for future reference.

Sedibeng District Municipality Policy and Procedures Manual (2008:105) further states that the reliability of the contractor must be monitored in terms of, among other things:

- price and financial stability;
- response time and technical competence;
- creativity and innovation;
- after delivery service;
- quality; and accuracy of delivery; and
- where applicable, contractors must be systematically monitored for performance against the criteria as set out in the registration for prospective provider database or as set out in the specifications / terms of reference.

In terms of the above, it is undeniable that SDM does not make provision for performance enhancement of emerging and inexperienced BEE suppliers. It is not also stated which impartial mechanisms are to be used in assessing the performance of BEE suppliers. Furthermore, it is not clear who is to be responsible for performance enforcement and monitoring in the procuring authority. These kinds of responsibilities

require individuals with the special knowledge, and should not be noted as things that should be performed without attaching responsibility.

3.12 SMME PARTICIPATION AND BREAKOUT PROCUREMENT

Breakout procurement means to break one huge contract into reasonable smaller contracts to expand the BEE beneficiary base. Scott (*in Hugo et al.*, 2002:331) argues that access to major markets provides a sound profit base from which small businesses may be transformed from often precarious enterprises into well-established undertakings. Furthermore, one of the best ways of distributing economic power more evenly, whilst retaining a competitive economy, is for those who currently dominate the economy to provide opportunities for fledging enterprises. In this case, through breakout procurement, government can encourage small businesses to participate in the mainstream economy.

Sedibeng District Municipality Policy and Procedures Manual (2008:28) firmly states that no requirement for goods and services above an estimated value of R200 000 (VAT included), may deliberately be split into parts or items of lesser value, merely for the sake of procuring goods and services. It is important to realize that breakout procurement is not a mechanism to circumvent the bidding process. It is meaningful to consider breakout procurement as the step in the right direction in spreading the BEE benefits. When one large contract is broken down into reasonable small BEE contracts, it certainly benefits more BEE designated groups than when is given to one company. So, it goes without saying that breakout procurement can be an excellent model to benefit as many BEE companies as possible.

3.13 PUBLIC-PRIVATE PARTNERSHIP (PPP) PROCUREMENT

SDM, in its current Policy and Procedures Manual (2008:80) simply states that municipal services partnerships including PPPs for goods, works and services must be executed in terms of part 2 of chapter 11 of the *Municipal Finance Management Act* 56 of 2003. It

should, however, be stressed that treasury approvals are most significant in relation to PPP procurement procedures, PPP agreements, management of PPP agreements and exemptions.

In short, part 2 of chapter 11 of the *Municipal Finance Management Act 56 of 2003* stipulates that a municipality may enter into a PPP agreement, but only if the municipality can demonstrate that the agreement will – provide value for money to the municipality; be affordable for the municipality; and transfer appropriate technical, operational and financial risk to the private party.

National Treasury (2007:4) states that in traditional procurement of public services or infrastructure, government pays for capital and operating cost overruns and late delivery. While the expertise and experience of a private company may be procured for the design and construction of infrastructure, once the asset is delivered, the private company is paid and then leaves. The public sector is then responsible for staffing, maintenance, and operation. In PPP procurement on the other hand, the public sector buys a full set of services, including infrastructure and other services, from the private sector. It pays for these over the term of the PPP agreement, based on successful delivery.

3.13.1 PPP procurement – Treasury Approval: IIA and IIB

Regulation 16.5 of the *Treasury Regulation 16 (2003)* stipulates that prior to the issuing of any procurement document for a PPP to any prospective bidder; the institution must obtain approval from the relevant treasury for the procurement documentation, including the draft PPP agreement. The treasury approval referred to above is regarded as Treasury Approval IIA. After the evaluation of the bids, but prior to appointing the preferred bidder, the institution must submit a report for approval by the relevant treasury, demonstrating how these criteria were satisfied in the preferred bid and including any other information as required by the relevant treasury. This treasury approval is regarded as Treasury Approval IIB.

3.13.2 Contracting PPP agreements – Treasury Approval: III

In terms of regulation 16.6 of the *Treasury Regulation 16* (2003), after the procurement procedure has been concluded, the accounting officer or accounting authority, must obtain approval from the relevant treasury – that the PPP agreement meets the requirements of affordability, value for money and substantial technical, operational and financial risk transfer as approved. This treasury approval is referred to as Treasury Approval III.

3.13.3 Management of PPP agreement

Regulation 16.7 of the *Treasury Regulation 16* (2003) regulates that the accounting officer or accounting authority of the institution that is party to a PPP agreement is responsible for ensuring that the PPP agreement is properly implemented, managed, enforced, monitored and reported on, and must maintain such mechanisms and procedures as approved in Treasury Approval III.

3.13.4 Exemptions

Regulation 16.10.1 of the *Treasury Regulation 16* (2003) further regulates that the relevant treasury may, subject to any terms and conditions that it considers appropriate and upon written application from an institution, exempt that institution whether in relation to a specific PPP or in general, from complying with any or all of the provisions of regulation 16.

Although this might be acceptable at the level of municipality, but ways and mechanisms should be found to guard against abuse of these exemptions. This is because good labor practice, BEE objectives and joint ventures which are of beneficial value to BEE designated groups might be immensely compromised by these exemptions.

3.14 COMBATING CORRUPTION

According to Evans (*in Lyson*, 2000:487), purchasing is a function that is particularly vulnerable to fraud. Fraud is not necessarily restricted to those with the title purchasing officer but may involve anyone in direct contact with suppliers. Leenders and Fearon (1993:265) point out that there is practice that seeks, through gifts, entertainment, and even open bribery, to influence the decision of persons responsible.

Department of Finance (2003:37) mentions that the Constitution 1996 provides for rights such as just administration and access to information and requires high standards of ethics within public administration. Acts passed in recent years relating to transparency and anti-corruption measures have enhanced the ability to combat corruption.

Regulation 38 (1) of the *Municipal Supply Chain Management Regulations* (2005) states that a supply chain management policy must provide measures for combating abuse of the supply chain management system. Sedibeng District Municipality Policy and Procedures Manual (2008:107) endorses this by stating that SDM officials should not perform their duties to unlawfully gain any form of compensation, payment or gratuities from any person, or supplier / contractor for themselves, their family or their friends. SDM officials should declare any business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest.

Section 6 (4) (c) of the *Public Protector Act* 23 of 1994 provides that in addition to the powers and functions assigned to the Public Protector by section 112 of the Constitution 1996, he or she shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged – improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in connection with the affairs of an institution or entity.

In terms of section 12 (1) of the *Prevention and Combating of Corrupt Activities Act* 12 of 2004, any person who accepts any gratification from any other person, whether for the

benefit of himself or for the benefit of that other person, in order to improperly influence in any way – the procurement of any contract with a public or private organization is guilty of the offence of corrupt activities relating to contracts.

3.15 CONCLUSION

The current Sedibeng District Municipality Policy and Procedures Manual was perused, procurement practice and processes observed, and available relevant SDM's procurement reports and documents critically looked at to provide an analysis of public sector procurement processes at the municipality. For the purpose of this study, focus was solely placed on: SCM background, norms and standards of public procurement; five public sector procurement pillars; and the overall implementation and application of the B-BBEE. The next chapter entails empirical research on constraints and benefits of procurement at SDM.

CHAPTER 4

EMPIRICAL RESEARCH ON CONSTRAINTS AND BENEFITS OF PROCUREMENT AT SEDIBENG DISTRICT MUNICIPALITY

4.1 INTRODUCTION

The first objective of this chapter is to clarify the research methods employed to collect data and the outcome of the data acquired through empirical research. The second and overall objective is to identify possible constraints and benefits of procurement at Sedibeng District Municipality (SDM) in empowering black economic empowerment beneficiaries.

4.2 DATA COLLECTION METHODS

During data collection, the researcher collects various kinds of empirical information or data, for instance historical, statistical or documentary data. This is accomplished through various methods and techniques of observation such as document analysis, content analysis, questionnaires and interviews (Mouton, 1996:110). The data collection methods employed in this study are discussed next.

4.2.1 Interviews

An interview allows the researcher to explain his or her questions. It also allows the researcher to probe more deeply following the answer of a respondent (De Wet *et al. in* Brynard & Hanekom, 2006:40). Interviews yield a great deal of useful information. The researcher asks questions related to any of the following: facts; standards for behavior; and conscious reasons for actions or feelings (Silverman *in* Leedy & Ormrod, 2005:146). Face-to-face interviews and conversations were held with relevant officials. Interviews enabled the researcher to create certainty about the objectives of the research; and to explain further where respondents did not comprehend questions. The interviews also

assisted the researcher to gain cooperation of respondents. The conversations were recorded and described in the field notes. Telephone interviews were also conducted to clarify responses which were unclear to the researcher.

4.2.2 Questionnaire

When questionnaires are used participants respond to questions with assurance that their responses are anonymous, and so they are more truthful than they are in a personal interview, particularly when they talk about sensitive or controversial issues (Leedy & Ormrod, 2005:46). For the purpose of this study a structured questionnaire was developed and used to obtain the views of officials on procurement systems. The questionnaire was also used to determine how the judicious implementation of procurement policies is executed. Finally, the questionnaire was utilized to solicit the views of contractors or suppliers on their extent of empowerment through procurement processes, policies, procedures and systems.

4.2.3 Observation

Observational techniques are used to determine how individuals, or groups of persons, react under specific circumstances, either natural or artificial. Every recording made should be a true reflection of what was observed at the precise moment, and not of what was anticipated or predicted (Brynard & Hanekom, 2006:46). Observations were conducted in the procurement function. These observations totaled 10 visits which varied in terms of time spent per visit. Observations were made on the following aspects: bid specification committee, supplier information filing and e-procurement filing, and supplier information retrieval.

4.2.4 Research methods

In the human sciences, two basic research methods or methodologies can be distinguished: qualitative and quantitative methodology or methodological models

(Brynard & Hanekom, 2006:36). Added to these two basic research methods is sampling population. These methods are detailed below.

4.2.4.1 Qualitative method

Qualitative research method focuses on two aspects. Firstly, it focuses on phenomena that occur in natural setting – that is, in the “real world”. Secondly, it involves studying those phenomena in all their complexity (Leedy & Ormrod, 2005:133). Qualitative methodology refers to research that produces descriptive data – generally the participant’s own written or spoken words pertaining to their experience or perception. Usually no numbers or counts are assigned to these observations. In qualitative research, methods such as case studies, in-depth interviewing of key informants, participant observation, questionnaires and perusal of personal documents (such as life histories, diaries and autobiographies) are used (Brynard & Hanekom, 2006:37).

In this study, interviews, questionnaires, observations and perusal of municipality’s procurement documents were used to achieve the following:

- to enable the researcher to gain insight about the procurement practice;
- to discover the shortcomings and benefits that exist within the public procurement activity in empowering BEE suppliers; and
- to provide means through which a judgment can be made with regard to the effectiveness of particular policies, practices, or innovations.

This means that the description, interpretation, verification and evaluation of research findings are based on in-depth analysis of responses of respondents.

4.2.4.2 Quantitative method

Quantitative method is associated with analytical research, and its purpose is to arrive at a universal statement (Mouton *in* Brynard & Hanekom, 2006:37). In quantitative methodology, the researcher assigns numbers to observations. By counting and measuring “things” or “objects”, data is produced. The methods used in quantitative

research include techniques such as observation, preliminary investigation, quantitative analysis and questionnaires (Brynard & Hanekom, 2006:37).

Quantitative research is the systematic scientific investigation of quantitative properties and phenomena and their relationships. The objective of quantitative research is to develop and employ mathematical models, theories and/or hypotheses pertaining to natural phenomena. The process of measurement is central to quantitative research because it provides the fundamental connection between empirical observation and mathematical expression of quantitative relationships (Wikipedia, 2009:1). In this study, quantitative analysis of responses is provided to present results about the phenomenon under study. This means that numbers and/or percentages are used to present precise and testable expression of the results and to draw meaningful conclusions from data collected.

4.2.4.3 Sampling population

Sampling is a technique employed to select a small group (the sample) with a view to determining the characteristics of a larger group (the population). If selected discerningly, the sample will display the same characteristics or properties as the large group. Population refers to objects, subjects, phenomena, cases, events and activities, i.e. all the objects, subjects, events, phenomena, activities or cases which the researcher wishes to research in order to establish new knowledge (Brynard & Hanekom, 2006:54). For the purpose of this study, sample population was drawn from the municipal procurement unit, SMME development unit and SDM contractors in the following categories: catering, construction, security and suppliers of stationery and software equipment. The sample population was well representative of elements of a larger population. It included role-players in public procurement and black economic empowerment. As sample population does not only refer to people but also to objects, textual material, and activities; cases relevant to the study were carefully selected as part of the sample population.

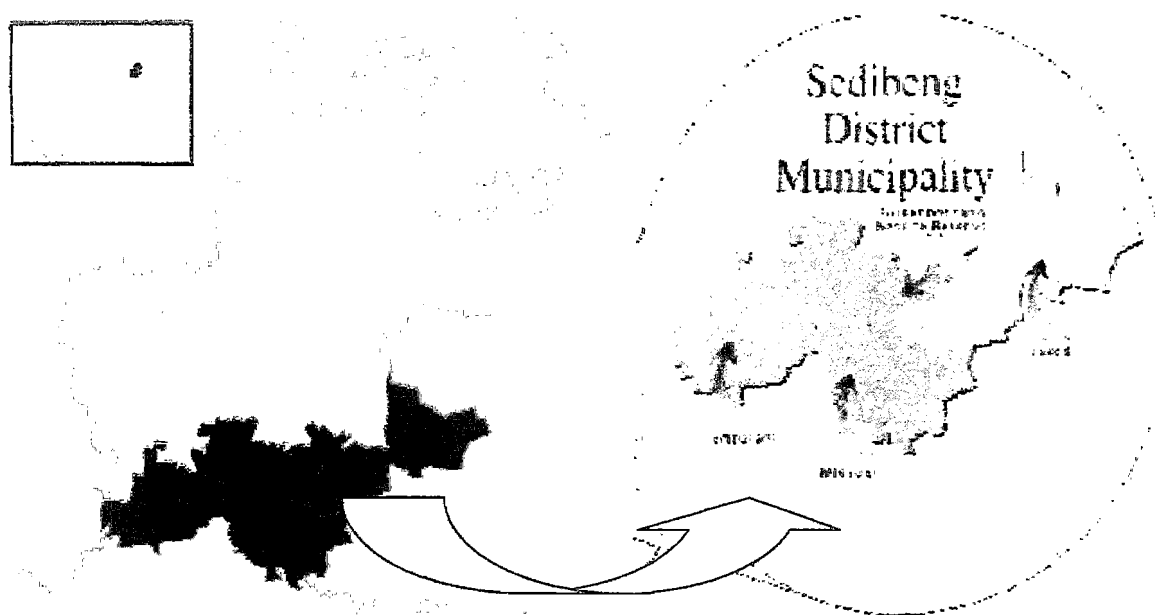
4.3 VALIDITY OF DATA COLLECTED

The validity and reliability of data-measuring instruments are crucial to scientific research. Validity refers to the potential of a design or an instrument to achieve or measure what it is supposed to measure (Brynard & Hanekom, 2006:47). The question that validity asks is: Does a design, in fact, measure what it is intended to measure, or does it measure something else altogether? The answer depends, at least in part, on the extent to which the person is, or can be, truthful in responding (Leedy & Ormrod, 2005:28). In this study, to ensure that an element of truth exists in responses to validate data collected, a questionnaire was divided into two sections. Section A and B were compulsory for municipal officials whilst suppliers answered section B only. It was made known to both participants that each group is participating and they must answer as honestly as possible. This was done to draw a comparative analysis of responses in order to minimize untruthful responses. Moreover, questions contained in the questionnaire were specifically designed to obtain the desired information. Brynard and Hanekom (2006:48) state that reliability pertains to the accuracy and consistency of measures. The same instrument must be able to produce the same data at a later stage under similar conditions. Leedy and Ormrod (2005:29) argue that reliability is a necessary but insufficient condition for validity. A phenomenon can be measured accurately only when it is measured consistently. Yet measuring something consistently does not necessarily mean measuring it accurately.

4.4 EMPIRICAL RESEARCH

The principal data collection method applied to execute this study is a structured questionnaire. Copies of this questionnaire were presented to relevant municipal officials and beneficiaries of SDM's procurement policies to complete. Personal face-to-face and telephone interviews were utilized to ascertain that the required data is effectively solicited. Observations were also made through appointments to attend bid committees' meetings and spend time in some relevant offices. This study was carried out at SDM

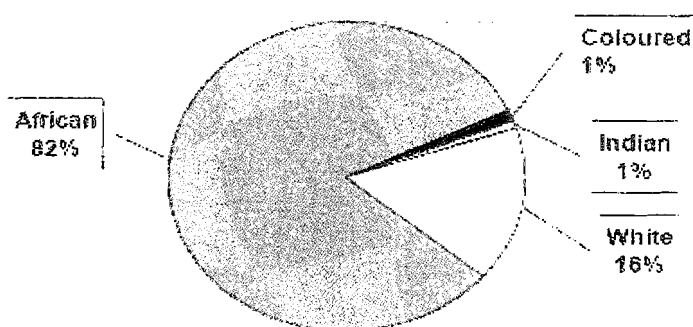
with the central focus in Vereeniging. Vereeniging is the seat of Sedibeng as indicated in chapter one, and is situated in Emfuleni. Below is a map of Sedibeng.



Adapted from Sedibeng District Municipality Draft Annual Report (2005:6).

The jurisdictional area of SDM covers the entire southern area of Gauteng Province as shown in the map above. It extends along a 120km axis from east to west (Sedibeng District Municipality Draft Annual Report, 2005:6). The diagram below depicts Sedibeng's racial composition.

Diagram 4.1: Population Distribution – Race



Adapted from Sedibeng District Municipality Draft Annual Report (2005:7).

The highest concentrated proportion of the total population is located within the urbanized areas of Emfuleni. Over 80% of Sedibeng population is concentrated in the Emfuleni Local Municipality, which represents 28% of the total area (Sedibeng District Municipality Draft Annual Report, 2005:5).

4.4.1 Outline of participants

Two different groups that were asked to complete questionnaires and subject themselves to interviews were:

- Municipal officials involved in procurement and SMME development; and
- BEE suppliers who are beneficiaries of SDM's procurement policies.

4.4.2 Procurement procedures, processes and systems

This part of the study represents section A of the questionnaire which was administered to municipal officials only (ANNEXURE A). Six municipal officials participated.

Question 1:

From the list choose instrument/s mostly used to procure goods and services at SDM to achieve BEE objectives.

The list contained three different instruments, namely: balanced scorecard, preferential procurement and B-BBEE. According to respondents only preferential procurement is used when procuring goods and services from suppliers at SDM to achieve BEE objectives. Based on the respondents' answers, it is important to note that preferential procurement is one element of balanced scorecard which is advocated by government to spread BEE benefits more appropriately.

Question 2:

Does the above chosen instrument, as applied at SDM, achieve the set BEE objectives?

In this case, respondents were divided in their responses. 67% of respondents believed that preferential procurement alone achieves the objectives of BEE. On the other side, 33% abjured the belief that preferential procurement alone is the good model to achieve BEE objectives.

Question 3:

Is the lowest price a reliable indicator to justify a procurement outcome at SDM?

All respondents indicated that lowest price is not a reliable indicator to justify a procurement outcome. However, it is apparent that the case study below contradicts this response. This case study is based on Quote No.: 8/2/2/33 – 2008 Supply and Installation of Tiles for Civic Theatre Toilets.

Case study: Bid Evaluation Report

Eleven suppliers submitted their bids for the above-mentioned work. The table below indicates how these bidders were evaluated. For the purpose of this study, focus is placed on how the top three companies were scored. Based on the bid evaluation report card below, it is evident that the first bidder who scored high total points, scored high on price (80 points). Similarly, the second and third bidders who scored fewer points scored fewer points on price (77.68 and 59.35). Furthermore, the first bidder scored few points for preference RDP goals. The bidders placed second and third respectively scored more for preference RDP goals. This means that the preference points of second and third bidders are slightly higher than those of the number one placed bidder. This evaluation report indicates that lowest price is used as a reliable indicator to justify a procurement outcome. It is apparent that the suppliers who are placed in positions two and three meet

more requirements to fulfill BEE objectives than the one placed in the first position. The only thing that puts these bidders at positions two and three is higher prices.

Table 4.1: Bid Evaluation Report Card

TOP 3 COMPANIES				
BIDDERS		1. Masenzeni Trading	2. T.D. Mashaba & Sons	3. Bongani Makhunga Trading
EVALUATION CRITERIA				
1. PRICE	BID AMOUNT	R83, 824.20	R86, 258.10	R105, 256.72
	PRICE 80	Points scored 80.00	Points scored 77.68	Points scored 59.35
2. PREFERENCE RDP GOALS	OWNERSHIP 6	Points scored 6.00	Points scored 6.00	Points scored 6.00
	FEMALE 4	Points scored 0.00	Points scored 2.00	Points scored 1.40
	DISABILITY 2	Points scored 0.00	Points scored 0.00	Points scored 0.00
3. SPECIFIC GOALS	LOCAL BIDDER 5	Points scored 5.00	Points scored 5.00	Points scored 5.00
	JOINT- VENTURE 3	Points scored 0.00	Points scored 0.00	Points scored 0.00
Total points for PPPFA 20		PPPFA points scored 11.00	PPPFA points scored 13.00	PPPFA points scored 12.40
Total: 100		Total score: 91.00	Total score: 90.60	Total score: 71.75

Adapted from Sedibeng District Municipality Bid Evaluation Report (2008:1).

Question 4:

What does SDM use as the indicators in the identification, selection and retention of suppliers to benefit BEE supplier? From the list below, choose the applicable indicator.

The list contained the following indicators: ability of supplier to do work; job creation; sustainability of supplier business; previous contract performance; local economic development; B-BBEE objectives; and price. These indicators were supposed to be rated according to mainly used, used, and not used. The table below represents the percentage breakdown of participants' responses.

Table 4.2: Percentage breakdown of responses

Indicators	Mainly Used	Used	Not Used
Ability of supplier to do work	67%	33%	-
Job creation	17%	66%	17%
Sustainability of supplier business	-	83%	17%
Previous contract performance	33%	67%	-
Local economic development	33%	67%	-
Broad-Based BEE objectives	33%	50%	17%
Price	67%	33%	-

In the case of the ability of a supplier to do work, there is a general agreement among respondents that this indicator is mainly used. In relation to job creation, 83% effectively agreed that it is used as an indicator. However, there is a minor disagreement of 17%. A minor dissension also exists with regard to sustainability of supplier business. 83% agreed that this indicator is used and 17% disagreed. There is an agreement about previous contract performance and local economic development as indicators used in the identification, selection and retention of suppliers to benefit BEE suppliers. On B-BBEE objectives, it is evident that 83% concurred that B-BBEE objectives are used. As a result, this admission refutes the assertion made earlier in question 1 that only preferential procurement is used when procuring goods and services from suppliers. Concerning price, 67% of respondents admitted that price is mainly used. 33% corroborated this admission by stating that price is used. It is also evident that none of the participants said that price is not used. The acceptance that price is mainly used in the identification, selection and retention of suppliers contradicts the response given by participants in question 3, where all respondents stated that lowest price is not a reliable indicator to justify a procurement outcome. This further justifies the finding that the lowest price is used as a reliable indicator at SDM to justify a procurement outcome.

Other procurement indicators stated by participants include: quality of proposal and functionality. Quality of proposal is a broad concept that must be clearly defined for suppliers to understand. This may mean different things to different people. For example, to some suppliers it may mean how one arranges the proposal (binding and so on), while to others it may mean how they price, present and explain their proposals. It appears that this also has to do with the final deliverable, hence it is emphasized that it is a broad concept that must be defined clearly to benefit suppliers. Functionality can relate to performance and/or conformance specifications; and the technical capacity of the supplier to deliver. Above all, in terms of the above analysis it is noticeable that there is no coherent and uniform comprehension of procurement practices, procedures and systems at SDM to benefit BEE suppliers. This can really impact negatively on beneficiaries of SDM procurement policies in future.

Question 5:

Is there a strategy at SDM to ensure continuous improvement in the efficiency of internal procurement processes and systems?

According to 66% of participants the SDM uses its policies and procedures manual to ensure continuous improvement in the efficiency of internal procurement processes and systems. 17% responded that such a strategy does not exist. Another 17% did not respond.

Question 6:

Is there a prescribed process followed by SDM to account for deviating from procurement prescripts, e.g. B-BBEE and PPPFA requirements?

All participants concurred that there is a prescribed process followed by SDM to account for deviating from procurement prescripts, such as Broad-Based Black Economic Empowerment Act 64 of 2003 and Preferential Procurement Policy Framework Act 5 of 2000.

Question 7:

Does emergency procurement, as applied at SDM, contradict the use of delegation system?

83% of participants believed that emergency procurement does not contradict the use of delegation system, while 17% agreed that the use of emergency procurement contradicts delegation system.

Question 8:

Is breakout procurement a better model to spread BEE benefits more appropriately?

According to 67% of respondents breakout procurement is a better model to spread BEE benefits more appropriately. Although 33% stated that it is not a better model to advance BEE, an overwhelming percentage of respondents agreed that it can effectively assist in spreading BEE benefits more appropriately. It is important to note that Sedibeng District Municipality Policy and Procedures Manual (2008:28) emphasizes that no requirement for goods and services above an estimated transaction value of R200 000 (VAT included), may deliberately be split (breakout) into parts or items of lesser value, merely for the sake of procuring the goods and services otherwise than through competitive bidding process.

Question 9:

Are Public-Private Partnerships (PPPs) constituted according to the prescripts governing PPPs?

An overwhelming 83% of participants said PPPs are constituted according to the prescripts governing PPPs. A mere 17% did not respond.

Question 10:

Is there a proven system to measure performance in the procurement function at SDM, for example, procurement unit performance in relation to BEE objectives of the municipality; and supplier performance?

83% of respondents answered that there is no system in place to measure performance in the procurement function at SDM – this includes procurement unit performance in relation to BEE objectives and supplier performance. 17% claimed that such a system exists, although there is no authentic evidence of it. In addition, some respondents stated that BEE objectives must be met by all the departments which procure goods and services, not Supply Chain Management (SCM) Unit only. However, it remains the principal responsibility of the procuring authority to ensure that BEE objectives are met. Furthermore, it is quite contradictory that 67% of participants stated, in question 2, that preferential procurement achieves the objectives of BEE while the SDM does not possess any instrument or system to measure procurement performance in relation to BEE and supplier performance. The question that arises is: How does one ascertain that preferential procurement meets the objectives of BEE while there is no measuring tool? Finally, other participants indicated that the only performance measurement tool that exists is the personnel performance management, which is an instrument used to assess individual municipal employees.

4.4.3 Constraints and benefits of public procurement

This part of the study represents section B of the questionnaire which was administered to both the municipal officials and suppliers or contractors in the Sedibeng District (ANNEXURE A). Six municipal officials and twenty businesses or suppliers participated. In other words, the total number of participants is twenty-six in this section.

Question 11:

Is there a program to ascertain that BEE suppliers have reasonable access to procurement opportunities at SDM?

On the one hand, 50% of participants stated that there is a program to ascertain that BEE suppliers have reasonable access to procurement opportunities at SDM. On the other hand, another 50% of respondents denied that there is a program in place to ascertain suppliers of reasonable access to procurement opportunities.

Question 12:

Are there independent and essential mechanisms SDM uses to enforce accountability in the procurement function?

35% of participants agreed that there are independent and essential mechanisms SDM uses to enforce accountability in the procurement function. 15% disagreed that such mechanisms exist. 50% did not respond to this question due to lack of certainty about the existence or non-existence of these mechanisms.

Question 13:

Does the accounting authority of SDM possess tools to measure the fairness of the procurement process from its initial stage to the final stage?

Although the majority of respondents were well-informed about the procurement process and bid committees' roles, they appeared to have confused procurement process and tools to evaluate the impartiality of this process. As a result, 73% of respondents stated that SDM possess tools to measure the fairness of the procurement process. 23% did not believe that SDM possess such tools. 4% did not respond.

Question 14:**How does SDM incorporate B-BBEE and PPPFA to unsolicited bids?**

27% of participants responded to this question, while 73% did not answer this question. Those who responded provided different answers. Some stated that they have never dealt with unsolicited bids before. It was also stated that no unsolicited bids have ever been placed on offer as they can jeopardize transparency in the supply chain management process. Furthermore, it was mentioned that SDM is experiencing difficulties in incorporating B-BBEE and PPPFA; and managers in the SCM Unit took upon themselves to liaise with the Department of Economic Development, Department of Trade and Industry and National Treasury to assist in this regard. Finally, it was indicated that the accounting officer of the SDM allows reasonable deviations.

Question 15:**Does SDM allocate any resources towards skills development of BEE suppliers?**

31% of respondents believed that the SDM allocates resources towards skills development of BEE suppliers. 69% vehemently rejected the idea that SDM allocates any resources to empower BEE suppliers. Some of the respondents who believed that SDM allocates resources towards skills development of BEE suppliers had difficulty specifying the resources they referred to. Others referred to the following as resources offered: Supplier Development Program that was conducted in 2006; once-off workshop for caterers which was held over six weeks in 2007; and B-BBEE Summit which was held in 2008.

Question 16:**Are any of the following practices used by SDM for the development of HDIs/SMME skills?**

Practices referred to in the above question included learnerships, mentoring, coaching and on-site training. 31% of respondents stated that these practices were conducted at the

SDM. They further pointed out that supplier development is done by way of encouraging joint-ventures. 69% abjured the existence of such practices. This rejection is consistent with the 69% rejection of skills development resources in question 15.

Question 17:

Is there a program in place to enhance the capacity of listed BEE suppliers to meet the requirements of procurement at SDM?

It was reliably indicated that such a program does not exist, and the municipality is considering developing it. However, 27% of participants claimed that such a program exists, while 73% strongly refuted the existence of such a program.

Question 18:

Are unsuccessful bidders, particularly, emerging BEE companies properly debriefed to encourage future participation?

The indication here is that unsuccessful bidders are not properly debriefed, and the municipality is in the process of establishing tender advisory services. Nevertheless, 12% of respondents declared that unsuccessful bidders are properly debriefed. 88% did not agree that unsuccessful bidders are properly debriefed.

Question 19:

Is contractor-subcontractor relationship monitored at SDM to ensure fair labor practice and skills transfer to BEE suppliers?

15% of participants agreed that the contractor-subcontractor relationship is monitored to ensure fair labor practice and skills transfer to BEE suppliers. 58% disagreed that the contractor-subcontractor relationship is monitored, while 27% chose not to answer this question as they have never been in a contractor-subcontractor relationship. Even though it was stated by some participants that risk is transferred to the contractor by law, in the interest of black economic empowerment, it remains the central responsibility of the

municipality and the procuring authority to monitor such relationships to ensure skills transfer.

Question 20:

Is there a model used by the procuring authority of SDM to effectively enforce and monitor a contract or agreement procured through the SCM policy?

By indication, the user cluster where the bid originates is responsible to monitor and enforce contract in relation to technical specifications. The legal services department of the municipality is responsible for the compilation of the contract/agreement on awarding of the bid. 42% of respondents agreed that there is a model used by the procuring authority of SDM to effectively enforce and monitor a contract or agreement. 50% stated that such a model does not exist, while 8% did not respond to this question. This 8% was not sure whether such a model exists or not. Service level agreements were also cited as models used to enforce and monitor contracts. Other indications were that: project sites are infrequently visited by officials in charge; no feedback is given to suppliers on the project development; some suppliers provide their own client visit report to acquire feedback on the level of service they render; and other providers do not get any visits during the execution stage of the project, until the completion stage when they hand over the project. The conclusion that can be drawn here is that there are no specialized individuals or a team tasked to monitor and enforce the contract.

Contract management policy was submitted to the researcher as another model used to enforce and monitor a contract or agreement. This policy caters for, among other things: contract administrator; contract administrator's role; contract documentation requirements; development of contract; and monitoring, performance measures and standards. In terms of this policy, Sedibeng District Municipality Contract Management Policy and Procedures (2009:7) states that the service provider is responsible for collecting and reporting accurate data in order to demonstrate compliance with performance standards established by the municipality and performance targets agreed to in the contract. The contract administrator is responsible for validating the data collection

and reporting methods used by the service provider. Furthermore, it is emphasized that contract monitoring encompasses administrative and pragmatic standards expected to be met by service providers; and that the contract administrator is responsible for developing contract monitoring tools.

It is imperative to point out that many municipal officials in the procurement function did not refer to this policy. It is also important to note that although the policy refers to contract administrator, it was reliably verified that the municipality has no such position. The policy places the responsibility of collecting and reporting performance compliance data squarely on the shoulders of the service provider. The policy further states that the responsibility of the contract administrator is to validate data collection and reporting methods, while it also states that the contract administrator is responsible for developing contract monitoring tools. This is a complete contradiction because it is not clear whether the contract administrator validates or develops methods and tools used to monitor the contract performance compliance. If the contract administrator validates monitoring tools used by the service provider, then there is a clear shift of responsibility on the part of the municipality. Another noticeable misunderstanding is with regard to the indication given earlier that the user cluster/department where the bid originates is responsible for monitoring and enforcing the contract; and the role of the contract administrator as being responsible for monitoring or validating tools used to monitor the contract progress.

4.5 CONCLUSION

This chapter clarified research methods employed to collect data and the outcome of the data acquired through empirical research. Possible constraints and benefits of procurement were also identified. The study showed that there is no coherent and uniform comprehension of procurement policies, procedures and systems at SDM. This study also unmasked contradictions among officials when making pronouncements on policies. It is, however, apparent that the intention to improve on policy formulation, interpretation and implementation highly exists. The next chapter focuses on summary, findings and recommendations.

CHAPTER 5

SUMMARY, FINDINGS AND RECOMMENDATIONS

5.1 INTRODUCTION

As a starting point, a short version of the four chapters that precede this chapter is provided. This is done to juxtapose the problem statement and hypothesis in chapter one with the literature study presented in chapters two and three, as well as the empirical research conducted at Sedibeng District Municipality (SDM) in chapter four. This chapter further identifies possible constraints as findings; and makes recommendations to improve procurement policies and procedures to economically empower designated groups in Sedibeng.

5.2 SUMMARY

This study scrutinized and probed the extent to which the implementation of procurement policies and procedures impacts on black economic empowerment to benefit designated groups in the Sedibeng municipal area.

Chapter one provided a background of the government's procurement reform process that started in 1995. The background drew attention to the fact that the Green Paper on Public Sector Procurement Reform in South Africa which was published in April 1997, recognized that public sector procurement can be used by government as a mechanism to achieve broader policy objectives, such as BEE. Definitions of core concepts in this study, such as procurement, supply chain management and black economic empowerment were also provided in this chapter. The chapter also introduced the problem statement and hypothesis.

Chapter two contextualized public sector procurement and black economic empowerment. It provided the historical and economic link between the two concepts.

This chapter mainly focused on tools utilized by government to achieve black economic empowerment. It also emphasized that any flaws in the execution of procurement activities may cause sizeable loss of public money. Furthermore, it highlighted the fact that the government is the biggest buyer of goods and services; and by insisting on BEE ownership and other elements of empowerment from suppliers, empowerment objectives can be achieved.

In line with the theoretical exposition provided in chapter two, chapter three focused on the analysis and practical implementation of procurement policies and procedures at SDM. Central to this analysis and application was the perusal of the municipality's supply chain management policies and procedures manual which was adopted in 2008.

Chapter four concentrated on the research methods used to collect data and the outcomes of the data collected by means of empirical study. This chapter further provided in-depth analysis of the possible constraints and benefits of procurement at SDM.

5.3 FINDINGS

The structured questionnaire compiled by the researcher, under the guidance of the study supervisor, probed the following: whether the procurement policies and procedures promote black economic empowerment; and the constraints and benefits of public procurement. Therefore, the following are findings that were extracted from the study:

- Although preferential procurement constitutes one element of the B-BBEE, it is mainly used to evaluate bids and quotations when goods and services are procured at SDM. This means that there is no alignment of preferential procurement evaluation system and the B-BBEE scorecard that broadens evaluation beyond only equity ownership and the promotion of the non-quantifiable Reconstruction and Development Program (RDP) goals.
- The use of lowest price as a reliable indicator to justify a procurement outcome impacts negatively on black economic empowerment goals. When price, in terms

of evaluation, is allocated 80 or 90 points and 10 or 20 points are allocated to preference RDP goals (ownership, female, disability) and specific goals (local bidder, joint-venture) respectively, the outcome of the procurement process does not promote BEE or B-BBEE. Effectively, this system is more profit-oriented and cost saving than promoting entrepreneurial efficiency and social agenda in the Sedibeng municipal area.

- Breakout procurement is a better model to spread BEE benefits more appropriately. This means that no contract may deliberately be split into parts or items of lesser value, merely for the sake of procuring goods and services than to promote BEE or B-BBEE.
- Lack of a system to measure performance of both the procurement function and supplier performance in relation to BEE objectives impairs the ability of the municipality to manage the process of black economic empowerment properly. Thereby failing to develop and implement sound SMME empowerment policies through its local economic development department. To meet empowerment objectives does not mean to give contracts to black suppliers without checking if they benefit the intended beneficiary base.
- There are no guidelines to incorporate B-BBEE and PPPFA to unsolicited bids. The guidelines on unsolicited bids should not be developed when such a situation arises.
- Sedibeng District Municipality infrequently allocates resources towards skills development of BEE suppliers. These resources include workshops and summits.
- There is no program in place to enhance the capacity of BEE suppliers listed on the database to meet the requirements of procurement.
- Emerging BEE suppliers are not debriefed properly to encourage future participation.
- The contractor-subcontractor relationship is not monitored to ensure skills transfer. Although risk is transferred to the contractor when the contract is awarded, it is necessary to monitor such a relationship. This is important to ascertain that skills transfer really occurs.

- There is an absence of readily available tools to monitor and enforce agreement procured through SCM policy. In addition to this, there is no specialized project team to monitor and enforce contracts. Hence, it is said that the user department where the bid originates is responsible for monitoring and enforcing the contract.

5.4 RECOMMENDATIONS

The recommendations provided below appear more suitable to enhance procurement policies and procedures in order to advance the objectives of BEE at SDM.

5.4.1 B-BBEE scorecard

In order to broaden procurement evaluation beyond black ownership, control and non-quantifiable Reconstruction and Development Program (RDP) goals, bidders must also earn points for other elements, such as the transfer of skills, equity employment, and indirect empowerment.

For SDM to achieve and sustain a vibrant local economy that is characterized by consistent growth, skills development, employment, equity and enterprise development, there must be an alignment of the currently used preferential procurement evaluation system and the B-BBEE scorecard. This will not only assist the municipality to break poverty, skills, business and opportunity barriers, but will also assist with the establishment of broad-based beneficiary base and equitable economic opportunities.

One of the effects of public procurement is that it must drive economic development and SMMEs. As a result, objectives and principles of B-BBEE must be to increase the number of new black-owned and black women-owned enterprises. Thus, public procurement departments of government institutions must assist in the creation and nurturing of new enterprises by awarding contracts to enterprises that meet objectives of B-BBEE; and not only one element which is preferential procurement.

5.4.2 Breakout procurement

Earlier in the study, breakout procurement is defined as the method of procurement wherein one huge contract is broken into reasonable smaller contracts to expand the BEE beneficiary base. In this way, access to public procurement opportunities by small businesses is created. This provides a business and profit base from which small enterprises are transformed to well-established businesses. Effectively, this should be seen as one of the best ways to distribute economic power more evenly by the municipality. This method of procurement will assist the municipality to reach out to as many BEE suppliers as possible. It will also enable the municipality to achieve the objectives of B-BBEE, while ensuring sustainable and dynamic local economy through the promotion and sustenance of local SMMEs.

5.4.3 Performance management and improvement systems

It is essential that the performance management methods are developed and implemented by the municipality's procurement function in relation to BEE objectives. This will enable the municipality to quantify and check the impact of procurement on local business development. It will, most importantly, capacitate the municipality to find out if it really achieves BEE objectives through its procurement policies and procedures. There are many systems that can be developed and utilized, but only two that appear to be relevant are recommended in line with findings presented above. These are the Management Assessment System (MAS) and Realistic Objectives System (ROS).

5.4.3.1 Management Assessment System (MAS)

It is recommended that the municipality undertakes the MAS to probe whether its procurement environment and strategies meet the requirements of best procurement standards and practices. By so doing the municipality will create improved and better performance in the procurement function. An assessment system may be defined as a systematic and comprehensive examination to carefully consider procurement policies,

procedures and strategies in order to determine their impact on government objectives. This systematic assessment should cover every aspect of procurement. A checklist should be developed and utilized repetitively. Procurement officials should not assess themselves. Management assessment should be executed by external assessors, national procurement office, a procurement research unit and consultants, if necessary.

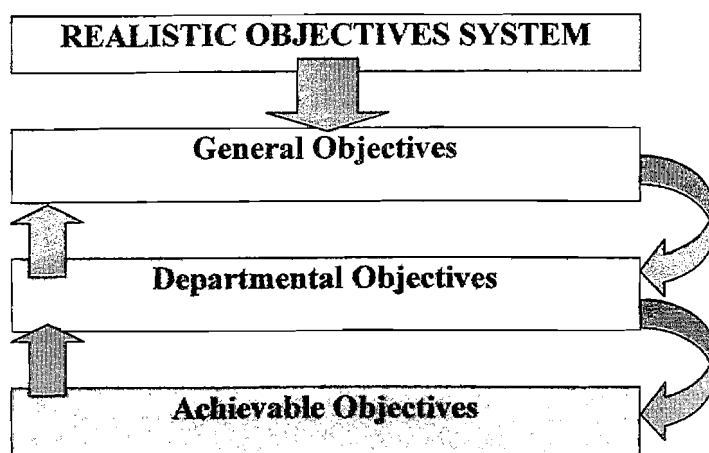
The objectives of MAS are:

- To ensure that the public institution uses modern procedures and methods which conform to best procurement practices;
- To monitor and gauge the efficient use of public resources to achieve socio-economic objectives; and
- To maintain an oversight on the institution's policies.

5.4.3.2 Realistic Objectives System (ROS)

In line with the MAS, it is recommended that the municipality also utilizes ROS. This recommendation is based on the fact that most government programs are aimed at fulfilling socio-economic objectives. ROS may be defined as the setting of objectives which can be achieved with available resources. There is a tendency within public institutions to set objectives which are practically impossible to achieve with available resources or resources to be made available. The purpose of ROS is to identify achievable objectives that a procurement function is expected to achieve within a specific period. The objectives are developed and agreed by the head of the procurement function in consultation with superiors. The discussions with superiors are to agree key tasks, performance standards and control mechanisms. Once these have been agreed, discussions with subordinates are held to determine what realistic objectives must be achieved if the departmental objectives are to be attained. In this manner general objectives are devolved down through the institution as shown in figure 5.1 below.

Figure 5.1: The cascading of institution's general objectives



Since, however, functions and individuals participate in the setting of their objectives; ROS also works from bottom up as well as from top down. It is of critical importance that objectives are: specific and capable of being achieved with existing resources or resources to be made available; quantifiable and measurable; time constrained; ranked in order of preference; and limited in number.

5.4.4 Non-competitive bid in relation to black economic empowerment

Although there is an indication by the municipality that it has never dealt with unsolicited bids before; and that unsolicited bids have never been placed on offer to avoid jeopardizing transparency in the supply chain management process, it is of the utmost importance to have a framework readily available and incorporated into the supply chain management policies and procedures manual. This is because an unsolicited bid situation may arise anytime, and when it arises it should not send procuring officials into panic mode. It might be contended that sole-source bid affects transparency in the supply chain management process, however, it should be noted that there are products and services where no other supplier for such products and services exists, for example, the supplier may have exclusive geographic or distribution rights for product or service.

In such a case: Will the municipality avoid procuring essential products or services from the sole-supplier to avoid jeopardizing transparency? Certainly no, the municipality will procure such goods and services. The municipality should rather incorporate black economic empowerment and preferential procurement to sole-source requests. This can be established through structured joint-ventures and partnerships. The main purpose of these structured joint-ventures and partnerships between sole-source suppliers and emerging BEE suppliers should be: coaching, mentoring, training and skills transfer.

5.4.5 Supplier support and development

Supplier support and development are concerned with assisting actual and potential suppliers to meet the requirements of public procurement. Infrequent workshops and summits as stated by the municipality are inadequate resources to support and develop suppliers. Support can take several forms including: special payment arrangement between the municipality and supplier; and general procurement assistance. Another important aspect is that of extending the resources of a large company to a smaller vendor which has demonstrated a willingness to meet the procurement requirements of the procuring authority. Supplier development may be considered as a special aspect of partnership sourcing and subcontracting. Specific recommended ways in which the municipality can become involved in the support and development of suppliers include: tender advice services; specific goods for designated suppliers; supplier performance appraisal; and small business program. These specific support and development ways are discussed below.

5.4.5.1 Tender Advice Services

The municipality should render these services in the spirit of development, and in such a way that it trains suppliers on government tendering processes. This should include information about current tenders. These services should be provided on a regular basis by trained municipal officials who are thoroughly familiar with the policy and procedural requirements of procurement at the municipality. Also important, as part of these

services, is debriefing of unsuccessful suppliers. This can be done properly by determining a specific percentage of tendered suppliers who will be debriefed. The idea here is to ensure that a certain number of those who tendered receive feedback which can be passed on to others who were also not successful. Debriefing unsuccessful suppliers will encourage future participation, particularly when unsuccessful suppliers know reasons why their bids were not successful. Debriefing topics may include: quoted price; experience of supplier; personnel; subcontracting; labor practice; equipment; and contract terms.

5.4.5.2 Specific goods or services for designated suppliers

The municipality's procurement policies should strive to solve socio-economic problems. As a result, there should be goods and services set aside to be supplied by emerging suppliers. Suitable goods and services must be identified and place a certain percentage of its order with suppliers from the Historically Disadvantaged Individuals (HDIs) of the Sedibeng municipal area. The municipality should encourage suppliers who benefit under such a program to develop into fully fledged business enterprises. This will gradually eliminate dependence on government as a source of business contracts.

5.4.5.3 Supplier performance appraisal

Supplier performance appraisal will allow the municipality to contribute to the development of suppliers by pointing out their weaknesses to them in an objective manner. Small suppliers can be developed only in a well structured relationship with the municipality. The purpose of developing BEE suppliers is to improve their ability to meet the municipal's procurement requirements. The development process makes it possible for the municipality to expose the small business to its unique internal procurement environment. The training which the small supplier receives should be based on the supplier's shortcomings.

5.4.5.4 Small business procurement program

The municipality should develop a small business procurement program that proactively increases the volume of goods and services procured from small businesses. This program should create some form of link between the local economic development, SMME development and the procurement departments of the municipality. The SDM's SMME development manager or officer with his/her support staff and the procurement practitioners should take full responsibility for the smooth running of the program. Small business procurement program must be characterized by measurement of program results against established black economic empowerment objectives. The program must be visible within and outside the municipality so buyers and small suppliers realize the commitment is real. The SMME development manager must support the small suppliers with information, guidance and advice. The small business development manager must be held accountable for coordinating actions and activities of the small business program with other municipal departments/functions.

5.4.6 Contract monitoring, enforcement and performance

Suppliers are responsible for the timely delivery of goods and services as per the terms and conditions of the contract procured through the supply chain management policy. However, the municipal procuring authority and the user-department cannot entirely rely on the supplier to ensure that work is progressing as scheduled and that the project or goods and services will be delivered as specified. The procuring authority and the user-department must possess tools to monitor supplier progress closely to ensure that the goods/services required are delivered at the right time, in the right quality and quantity. Essential to contract monitoring, enforcement and performance is contract administration which encompasses all legal dealings between the government and the supplier. In the case of the municipality, monitoring the contractor-subcontractor relationship should form part of contract management or administration. Several weaknesses exist in the municipality's contract monitoring, enforcement and performance management. The most apparent weaknesses are: to allow improperly trained officials (user-department) to

perform contract oversight; and to require the supplier to independently and solely provide work progress reports. Under normal circumstances, this leads to problems in performance. Establishing or improving contract management practices will help the municipality to prevent wastage of public money through incomplete or failed projects.

The municipality should constitute a committed contract management team. This team should comprise of project/contract officer, procurement officer, representative from user-department, municipal technical expert in goods or services required and a representative from finance department. Together these officials will be able to perform the following functions: monitor the contract progress; enforce terms and conditions of the contract; ensure that major milestones are achieved timely; assist with financial reports and payment adjustments; and ascertain that required quality and quantity are achieved. In addition to the contract management team, a proper contract management policy must be developed to guide this team. This policy must cover the following aspects: responsibilities of the contract/project officer; review and processing of invoices; contract monitoring methods and templates; and contract closeout. These essential components are detailed below.

5.4.6.1 Responsibilities of the project/contract officer

The contract officer should liaise with municipal quality assurance monitor and technical inspectors to enhance monitoring tools and report on the contractor's technical performance. He/she must regularly make site visits and speak with the contractor concerning the progress of the contract. The contract officer must develop contract reporting requirements, such as progress reports and reporting templates to help determine if there will be cost overruns, late deliveries, and poor contractor performance. He/she must also convene monthly, bimonthly or quarterly meetings with senior level contractor officials, procurement officials and user-department officials to discuss the contractor's performance. This will ensure that the contract terms and conditions are adhered to.

5.4.6.2 Review and processing invoices

Late payment of suppliers is a huge disservice and discouragement from the municipality. Payment to supplier for goods and services delivered is government's obligation under the contract. The government expects the contractor to meet all contract requirements for quality, quantity and timeliness. The contractor expects no less of the government in meeting its obligations to timely and accurately pay for goods and services received. A plan for quickly and efficiently meeting this obligation is essential. Therefore, it is incumbent upon contract, procurement, and finance officials to understand clearly their roles and responsibilities related to receiving and processing invoices.

5.4.6.3 Contract monitoring methods

It is recorded that the municipality has no effective ways and tools to monitor contract progress, except for irregular visits to project sites by municipal officials. These visits are meaningless because there are no reports filed. After a supplier has been awarded a contract, it is important to monitor and assess the supplier's overall performance. The purpose is to enhance the relationship and thereby control performance.

There are various methods and templates that can be utilized to evaluate and monitor contract progress; however, only three are recommended for use by the municipality. These are the departmental evaluation plan, contract progress report form, and checklists. It is absolutely important for the municipality to possess standardized monitoring tools. The implementation of these methods is detailed below.

- **Departmental Evaluation Plan**

Under this plan, personnel from various departments of the procuring organization maintain evaluation records. The individuals involved include personnel from procurement, engineering, finance, receiving and quality. Each evaluator evaluates a supplier against a list of performance factors. Supplier is then assigned an overall group

evaluation. Figure 5.2 below shows a typical supplier performance evaluation form used in the departmental evaluation plan.

Figure 5.2: Departmental Evaluation Plan - supplier evaluation form

Supplier:		Contract No:	
Departmental Evaluation	Good	Fair	Poor
Procurement Department			
Finance Department			
User-Department			
Performance Factors			
Delivers on time			
Advises us on potential troubles			
Accepts terms without exceptions			
Invoices correctly			
No special financial considerations			
Delivers per routine instructions			
Quality of material			
Evaluator:	Signature:		
Department:	Date:		

It is important to note that more performance factors can be added depending on what the organization's departments intend to evaluate.

- **Contract Progress Report Form**

The contract progress report form is another monitoring tool that the municipality can use to assess progress of the contract or project procured through the supply chain management policy. Figure 5.3 below shows a sample contract progress report form that can be adapted to suit the municipality.

Figure 5.3: Contract Progress Report Form

CONTRACT PROGRESS REPORT FORM									
Contract Name:					Contract No.:				
User-Department:					Contract Manager:				
Contract Status Levels									
1	2	3	4	5	6	7	8	9	10
Contract Tasks or Milestones achieved this period									
Tasks, Milestones, Outcomes			Comments		Completion Dates				
					Plan		Actual		
Major Risks					Recommendations				
Procurement Officer: _____					Date: _____				

The contract status that should be reflected by numbers 1 to 10 indicates different progress levels of the contract. Levels 1 to 4 show major concern; hence they are reflected by red color. This means that delivery time or budget, or quality is severely compromised. There is no restorative action in place, or the corrective action is not effective. And there is high propensity that the delivery will not be timely, within budget and of the quality required. Levels 5 to 7 indicate minor concern. They are reflected by amber color. This means that delivery time or budget, or quality impact is minor. Remedial plan is in place and is effective. Levels 8 to 10 are reflected by green color. This means that there is normal level of attention and no additional attention is needed.

- **Checklists**

These are the simplest forms of evaluation that the municipality can use. Checklists can be developed based on the terms of the contract. Even though they are simple to develop, checklists are effective in reporting contract progress. Below is a sample checklist.

Figure 5.4: Sample checklist

EVALUATION CRITERIA: To what level		EVALUATION SCORING: 5 = Excellent; 4 = Good; 3 = Satisfactory; 2 = Less than satisfactory; 1 = Unacceptable. N/A = Not Applicable. Comments are required if any score is less than 3.
1.	Does the contractor report in accordance with contract requirements?	
2.	Are quality and timeliness of goods and services acceptable?	
3.	Does the contractor adequately staff the project?	
4.	Are material deliveries in accordance with contractor's schedule?	
5.	Are the materials and workmanship in compliance with contract requirements?	
6.	Does the contractor promptly pay subcontractor and/or suppliers?	
7.	Does the contractor cause any delays to the project?	
8.	Does the contractor work to actively resolve problems?	
9.	Does the contractor cooperate with other contractors and suppliers?	
10.	Does the contractor submit correct invoices?	
Contract Manager:		Date:
User-Department:		Date:
Procurement Officer:		Date:

It is important to note that the monitoring of a contract relationship between contractor and subcontractor can be done by means of a checklist. This checklist should be developed in accordance with terms and conditions set for contractor-subcontractor relationship.

5.4.6.4 Contract closeout

Contract closeout begins when the contract has been physically completed, i.e. all services have been performed and products delivered. Closeout is completed when all administrative actions have been completed, all disputes settled, and final payment has been made. This process requires close coordination between the procurement office, the finance office, the user-department, and the contractor.

5.5 CONCLUSION

This chapter concentrated on summary, findings and recommendations. The comparative analysis of chapters that preceded this chapter was provided. Possible constraints were presented as findings. Recommendations that were provided include: the B-BBEE scorecard; breakout procurement; performance management and improvement systems; guidelines for non-competitive bids; supplier support and development; and contract monitoring and performance systems. Successful procurement management emanates from good planning, execution, monitoring and control processes. Although the municipal procurement function plays a prominent role in the procurement of goods and services, the success of the contract depends largely on the performance of the contractor and its subcontractors. Therefore, it is essential that the contract procured through supply chain management policy is properly monitored and enforced.

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Research Questionnaire

**Public sector procurement as strategic tool for Black Economic Empowerment at
Sedibeng District Municipality**

Dear Respondent

Please note that research provides scientific knowledge that can be used to determine the general applicability of objectives, as well as the efficient utilization of resources. The knowledge obtained by means of research can be used to improve decision-making. This is especially important when one considers that decision-making in the public or private sector is based on verified data and not on intuition, tradition or mere gut feeling (Brynard & Hanekom, 2006:1).

The completion of this questionnaire is not intended for any other purpose, whatsoever, than to fulfill the following research objectives:

- To provide context of the concepts public procurement and Black Economic empowerment;
- To give an outline of the procedures, processes and systems used to procure goods and services at the municipality;
- To research the constraints and benefits of public procurement in empowering designated groups at the municipality; and
- To give recommendations that may improve procurement at the municipality.

INSTRUCTIONS:

- Use a black ball-point pen and please print clearly.
- Tick the applicable box [Yes/No].
- Fill in the space provided for detail or attach copy.
- Answer as honest as possible.
- All relevant SDM employees, bid committees' members and any other official who play a role in the procurement of goods and services must answer sections A and B of the questionnaire.
- Beneficiaries of SDM procurement policies, i.e. contractors or suppliers must answer section B only.

Please complete the questionnaire as directed. All responses will be treated confidentially.

SECTION A: PROCUREMENT PROCEDURES, PROCESSES AND SYSTEMS

1. From the list below, choose instrument/s mostly used when procuring goods and services at SDM to achieve BEE objectives (tick X where applicable):

Balanced scorecard	
Preferential procurement	
Broad-Based Black Economic Empowerment	

2. Is/are the above ticked instrument/s, as applied at SDM, achieves the set Black Economic Empowerment objectives?

Yes	No
-----	----

3. Is the lowest price a reliable indicator to justify a procurement outcome at SDM?

Yes	No
-----	----

4. What does SDM use as the indicators in the identification, selection and retention of suppliers to benefit BEE suppliers? From the list below, tick X where applicable.

Indicators	Mainly Used	Used	Not used
Ability of supplier to do work			
Job creation			
Sustainability of supplier business			
Previous contract performance			
Local economic development			
Broad-Based BEE objectives			
Price			

Other indicators (please specify)

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5. Is there a strategy at SDM to ensure continuous improvement in the efficiency of internal procurement processes and systems?

Yes	No
-----	----

Provide relevant detail or attach copy of strategy.

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6. Is there a prescribed process followed by SDM to account for deviating from procurement prescripts, e.g. B-BBEE and PPPFA requirements?

Yes	No
-----	----

7. Does emergency procurement, as applied at SDM, contradict the use of delegation system?

Yes	No
-----	----

8. Is breakout procurement a better model to spread BEE benefits more appropriately?

Yes	No
-----	----

9. Are Public-Private Partnerships (PPPs) constituted according to the prescripts governing PPPs?

Yes	No
-----	----

Provide relevant detail or a sample PPP agreement.

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10. Is there any proven system to measure performance in the procurement function at SDM? For example, procurement unit performance in relation to the BEE objectives of the municipality; and supplier performance.

Yes	No
-----	----

Give detail or a sample performance measurement tool.

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SECTION B: CONSTRAINTS AND BENEFITS OF PUBLIC PROCUREMENT

11. Is there a program to ascertain that BEE suppliers have reasonable access to procurement opportunities at SDM?

Yes	No
-----	----

12. Are there independent and essential mechanisms SDM uses to enforce accountability in the procurement function?

Yes	No
-----	----

13. Does the accounting authority of the SDM possess tools to measure the fairness of the procurement process from its initial stage to the final award stage?

Yes	No
-----	----

14. How does SDM incorporate B-BBEE and PPPFA to unsolicited bids?

Use the space below to provide relevant detail.

.....

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15. Does SDM allocate any resources towards skills development of BEE suppliers?

Yes	No
-----	----

Please specify resources.

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16. Are any of the following practices used by SDM for the development of HDIs / SMMEs skills? Tick X where applicable.

Learnerships		Mentoring		Coaching		On-site training	
--------------	--	-----------	--	----------	--	------------------	--

Other (please specify).

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.....

17. Is there a program in place to enhance the capacity of listed BEE suppliers to meet the requirements of procurement at the SDM?

Yes	No
-----	----

18. Are unsuccessful bidders, particularly, emerging BEE companies properly debriefed to encourage future participation?

Yes	No
-----	----

19. Is contractor-subcontractor relationship monitored at SDM to ensure fair labor practice and skills transfer to BEE suppliers?

Yes	No
-----	----

20. Is there a model used by the procuring authority of SDM to effectively enforce and monitor a contract or agreement procured through SCM policy?

Yes	No
-----	----

Give relevant detail or provide a sample monitoring tool.

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Name of Institution:

Date Questionnaire Completed: 2009/____/____

Questionnaire completed by:

Designation / Position:

Signature:

(Please print clearly)
