

Challenges of black construction professionals with Black Economic Empowerment as a procurement policy in South Africa

Black
Economic
Empowerment

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Abstract

Purpose – The South African Government announced the black economic empowerment (BEE) legislation in 2003 in the public procurement systems. The legislation was deemed a catalyst for the emancipation of the previously disadvantaged citizens due to the apartheid government policies that secluded them from economic activities. This study aims to explore the challenges of black construction professionals with the BEE as a procurement policy.

Design/methodology/approach – This study adopted a qualitative research approach. Thirty-five black construction professionals were contacted for interviews, of which 21 responded. Due to the COVID-19 restriction, participants were interviewed using telephone interview techniques. The information received was analysed using the thematic contents analysis method.

Findings – The findings revealed the challenges confronting black construction professionals regarding the BEE policy as corrupt practices (leading to the award of contracts to unqualified people), fronting of contractors and individuals for unqualified firms, preventing the participation of experienced and foreign firms, poor policy implementation with no monitoring mechanism and loss of tender due to strict requirements.

Social implications – Urgent attention is needed to review the BEE policy implementation process by the South African government to address the challenges enumerated by the policy beneficiaries to ensure the achievement of the policy objectives.

Originality/value – This study has identified the challenges of the BEE policy; thus, the government can institute measures to address the hindrances thwarting the beneficiaries from realising the policy objectives.

Keywords BEE, Black, Construction professionals, Government, Public procurement, South Africa

Paper type Research paper

1. Introduction

The history of apartheid colonial rule in South Africa prevented black citizens in South Africa, constituting 79% of the entire population (Statistics South Africa, 2009), from owning less than 2% of shares listed on the Johannesburg Stock Exchange. The practices of



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the apartheid regime also prevented black South Africans from partaking in mainstream economic activities (Ntingi and Hlatshwayo, 2010). Upon assuming office in 1994, the African National Congress (ANC) government introduced several measures to promote and advance the socio-economic welfare of South Africans (Woker, 2019). One of the measures is the black economic empowerment (BEE) policy, which addresses the past socio-economic injustices perpetrated by the apartheid rulers. The BEE policy was instituted to support black business ownership by giving preferences in tender awards to businesses with black majority ownership to redistribute the economic wealth to previously disadvantaged citizens (Ferreira and de Villiers, 2011). This aligns with the South African Constitution, which recognises “human dignity, the achievement of equality and the advancement of human rights and freedoms” (Madlanga, 2019).

According to Krüger (2016), the BEE is one of the major policy initiatives instituted in South Africa by the ANC government since 1994 to enhance the lives of many citizens, eradicate poverty and create employment for the citizens who were deprived of the economic activities for many years due to the policies of the apartheid rulers. Thus, reducing unemployment among black citizens was one of the cardinal objectives of the BEE policy. The BEE policy was published by the South African Department of Trade and Industry (DTI) in 2003, titled “A Strategy for Broad-Based Black Economic Empowerment” (Acemoglu *et al.*, 2007). The BEE Act 53 of 2003 took effect on 7 January 2004, focused on BEE promotion, and empowered the Minister of Trade and Industry to ensure the fulfilment of the policy objectives (Preamble to South Africa BEE Act, 2003).

A code of practice was developed to streamline the policy implementation and gazetted in 2007 (Burger and Jafta, 2010). After that, a generic balanced scorecard was created to guide companies’ compliance. According to Acemoglu *et al.* (2007), the BEE document was the first to allocate certain weights to the various elements in the policy, called a generic scorecard. Companies must achieve specific BEE points to increase their chances of being awarded a public contract. Jack and Harris (2007) suggest that the weighting percentages for each element range from 5% to 20%. The BEE scorecard is for the following elements:

- ownership;
- management;
- employment equity;
- skills development;
- preferential procurement;
- enterprise development; and
- socio-economic development.

The Preferential Procurement Policy Framework Act also provide 90/10 or 80/20 scoring points, where 10 or 20 is the BEE point (Madlanga, 2019). Therefore, organisations require higher BEE point levels to increase their chances of winning public contracts based on these assessment criteria (Acemoglu *et al.*, 2007). Thus, Rumney (2005) opined that these measures ensured leverage for the government in controlling resource allocation in specific sectors of the economy.

However, since the BEE policy came into fruition, many corrupt activities have been reported about the policy implementation, which some describe as “a cancer that has no place in the ANC nor South African society and is considered “. . . a cancer to development [. . .] which is hampering economic integration [. . .] and Africa’s social and economic development” (SAPA, 2014). Again, according to Jeffery (2014), the BEE policy is bedevilled with many cases of nepotism, fraud, corruption, favouritism and what is known as “tenderpreneurs” in the

procurement practices. Although researchers have identified the faults of the policy (Jeffery (2014), procurement corruption (Mantzaris, 2014), BEE in the student accommodation sector (Mofokeng *et al.*, 2018), the impact of the policy on the beneficiaries (Amoah, 2023) and BEE policy and impact on human rights (Madlanga, 2019), little has been done in the literature to ascertain the challenges of the BEE policy beneficiaries in the South African construction industry. Therefore, this study assesses the challenges black construction professionals experienced in applying the BEE procurement policy.

2. Literature review

2.1 *The black economic empowerment as public procurement policy*

In the era of the apartheid government, black South Africans were eliminated from participating in government, economic and social affairs (Jackson *et al.*, 2005). However, this phenomenon metamorphosed in 1994 when the ANC, led by Nelson Mandela, took power after winning an election. The ANC government embarked on diverse strategies to correct and reverse injustices suffered by the blacks during the apartheid government to empower black citizens socio-economically (Ferreira and de Villiers, 2011). One such transformation policy introduced by the ANC government is the BEE, which aims to increase the black representation of privately owned companies and help them participate in public procurement (Madlanga, 2019). These gave birth to The Black Economic Empowerment Amendment Act 53 in South Africa, legislated under the second term of Thabo Mbeki's presidency (Ferreira and de Villiers, 2011). The original policy objectives, as stated in the 2003 Act, are as follows:

- “promoting black citizens’ participation in the economy;
- racial ownership and management structure change in businesses;
- increasing communities, workers, cooperatives access to economic activities, and skills training;
- increasing management of businesses of black women and skills training;
- improve sustainable development and general prosperity of black citizens;
- empowering rural and local communities to access to economic activities, land, infrastructure, ownership, and skills”; and
- enhance BEE's access to finance (South Africa, 2003).

However, the Black Economic Empowerment Amendment Act 46 (2013) defines BEE as a strategic option for the economic emancipation of all black people, particularly women, workers, youth, people with disabilities, and people living in rural areas, through various socio-economic strategies. The Act aims to:

- increase the number of black people who manage, own and control enterprises and productive assets;
- facilitate ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
- human resource and skills development;
- achieve equitable representation in all occupational categories and levels in the workforce;
- preferential procurement from enterprises that are owned or managed by black people; and
- investment in enterprises that are owned or managed by black people.

The BEE Amendment Act 46 (2013) describe black people as Africans, Coloureds and Indians who are:

- citizens of the Republic of South Africa by birth or descent; and
- became citizens of the Republic of South Africa by naturalisation before the 27 April 1994; or on or after 27 April 1994 and would have been entitled to acquire citizenship by naturalisation before that date.

The government has instituted measures to ensure and encourage BEE compliance by organisations. For instance, government expenditures are geared towards BEE-rated entities' procurement preferences and granting licences for BEE compliance entities (Ponte and Van Sittert, 2007). Again, the government prefers BEE-compliant companies when selling state assets or entering a public-private partnership to implement public works, including the tourism sector (Mofokeng *et al.*, 2018). All these measures were implemented to advantage the previously disadvantaged citizens and include them in mainstream economic activities.

2.2 Public procurement as a policy tool

In European countries, public organisations spend about 15% of the gross domestic product annually on procuring goods and services (Grandia, 2015). These goods range from stationary fighter jets to cleaning services and road construction. Thus, the role of public procurement has significantly changed over the years. Public procurement agencies can apply procurement to leverage fundamental public policy objectives (Grandia, 2015). According to Telgen *et al.* (2007), public procurement was, in the past, concerned with fulfilling specific needs and providing what users demand in the correct quantity, at the appropriate time, and in the right place. However, public procurement ensures value addition to the environment and the marginalised individuals. For instance, public procurement is now used in most European countries to achieve several societal goals, such as reducing unemployment, improving working conditions, stimulating innovation, providing openings for small and medium-sized enterprises (SMEs) or local businesses, and stimulating sustainable goods and services markets. Thus, public procurement is not a means to an end but rather a policy tool to achieve desired outcomes in society (Grandia and Meehan, 2017).

The European Parliament and the Council of the European Union adopted a new procurement directive in 2014 whereby they had to transform their procurement systems before 2016. These new directives were to use public procurement to create more opportunities for SMEs and ensure the possibility of using public procurement as a policy tool (European Commission, 2016; Lember *et al.*, 2015) suggest that public procurement as a policy tool to stimulate innovation and provide subsidies for research and development is prevalent in Europe, the USA, Brazil and China. Over the years, public procurement has been used to further a wide range of public policies, including unemployment reduction, condition of employment improvement, small business support, local development, disabled workers' employment and equal pay for men and women (McCrudden, 2004).

In South Africa, the Preferential Procurement Policy Framework Act of 2000 includes specific goals such as awarding public contracts to historically discriminated persons based on race, gender, and disabilities (South Africa, 2000). The South African government introduced these preferential procurement policies to facilitate the inclusion of black-owned companies in public sector projects or activities (Iheduru, 2004). As such, points are assigned to firms based on the ownership structure, management structure and compositions of the staff employed (Krüger, 2011), as indicated in Table 1. Therefore, the higher the previously

disadvantaged citizens' involvement in a firm regarding ownership, management and staff employed, the higher the BEE contributor level and the points allocated. From [Table 3](#), Level 1 contributor means that most of the firm's ownership, management and staff are previously disadvantaged citizens, and therefore, ten BEE points will be allocated on the certificate issued. In evaluating a firm's eligibility based on the submitted tender, these BEE points are added to the price score to arrive at the total score (see [Table 1](#)). The total score is then ranked in descending order to determine the firm with the highest score, which is usually recommended to be appointed by the tender evaluators.

From [Table 2](#), any of the four contractors with the highest total score in column C will be appointed or recommended for appointment. This indicates that BEE policy plays a significant role in contractor procurement processes in the South African public sector, as a firm without an impressive BEE score is unlikely to win public contracts.

The BEE policy is therefore instituted to enhance the participation of previously disadvantaged individuals in the public procurement process to assist them in growing their skills. This means the South African Government uses BEE as a policy tool to address past socio-economic injustices. According to [Russell and Meehan \(2014\)](#), public procurement should produce value for citizens; procurement agents should be accountable for complying with procurement regulations, expenditures, goods and service delivery.

2.3 Challenges of public procurement as a policy tool

Public procurement as a policy has encountered many challenges over the years. For instance, section 217 (1) of the South African constitution prescribes five principles underpinning procurement: fairness, equity, transparency, competitiveness and cost-effectiveness. However, despite these principles, [Sewpersadh and Mubangizi \(2017\)](#) suggest that allegations of

BEE contributor level	Total BEE points attainable
Level 1 contributor	10
Level 2 contributor	9
Level 3 contributor	8
Level 4 contributor	5
Level 5 contributor	4
Level 6 contributor	3
Level 7 contributor	2
Level 8 contributor	1
Non-contributor	0

Table 1.
Total BEE points used in the tender evaluation process

Source: Table courtesy of [IDT \(2018\)](#)

Name of contractor	Price score (a)	BEE score (b)	Total (BEE + price scores) C = (a + b)	Ranking Based on (c)
A	X	X	X	X
B	X	X	X	X
C	X	X	X	X
D	X	X	X	X

Table 2.
Calculation of total points for contract award

Source: Created by author

corruption have been levelled against senior government officials and politicians in the procurement system in South Africa, which have been left unattended due to post-apartheid complexities. Likewise, Krüger (2016) suggests that the BEE policy in the South African procurement systems still needs to achieve its goals, such as reducing unemployment and eradicating poverty and inequality due to government officials' increased graft and corruption. Thus, Kruger describes BEE as a curse to economic, social and political progress, which should be scrapped entirely. Again, according to Jack and Harris (2007), economic policies should promote businesses rather than public procurement policies because companies may lose local and foreign investors by implementing the BEE policy, thus negatively affecting share prices.

Storsjö and Kachali (2017) examined the use of public procurement to achieve innovation and civil preparedness. They revealed that market realities, outcome uncertainties, and responsibilities affect how procurers can achieve policy objectives. Again, due to knowledge limitations and resources, policy implementers were handicapped in bringing the policy objective to fruition. Storsjö and Kachali (2017) recommend a holistic approach, behaviour changes and procurer capacity building for any meaningful implementation of public procurement policies. The public procurement framework has also been stringent in France, thus affecting the market structure, the firm's position in the market and its networks (Mamavi *et al.*, 2017). According to Ibrahim *et al.* (2017), although public procurement laws can help achieve value for money and other related objectives, their effectiveness is unclear in developing countries. The mere existence of the policy framework does not guarantee compliance. A study in Ghana enumerated several challenges in the public procurement systems, such as political pressure, lack of political will, corruption, weak institutions and enforcement mechanisms that weaken compliance with the procurement law (Ibrahim *et al.*, 2017).

SMEs experience challenges in public procurement, leading to a relatively small percentage of public contracts awarded to them by public organisations due to anti-competition practices such as bid-rigging and corruption (Hughes *et al.*, 2019). A study by Shai *et al.* (2019) indicates that various interventions instituted by the government to enhance BEE performance as a procurement policy have been undermined, thus limiting the impact of the policy on black people in the economy. They attribute the failure of the BEE policy to design and implementation flaws. Therefore, to promote the participation of SMEs in public works, attitudinal and institutional changes and affirmative action schemes are inevitable (Graells, 2016). Therefore, Hunsaker (2009) suggests that public procurement involves public money; thus, procurers should exercise their power in the public's best interest because practices such as favouritism or unethical bidding can destroy one's reputation professionally.

3. Research methodology

3.1 Research approach

The research approach adopted for the study is qualitative. This approach assumes that reality exists independently from the knowledge seekers. In other words, social reality is subjective but not objective because it is shaped by our perceptions (Saunders *et al.*, 2019). In a qualitative study, the researcher is regarded as the instrument that interprets data's meaning and analyses the data from themes (Leedy and Ormrod, 2015). It is the best approach when the researcher comprehensively understands a phenomenon (Creswell, 2014). This study wanted to understand the challenges black construction professionals experienced with the BEE policy since its introduction in the public procurement system; thus, using a qualitative research approach is appropriate.

3.2 Target population and sampling method

Population in qualitative research refers to all conceivable elements, entities, groups of people, events and observations related to a phenomenon the researcher wishes to investigate (Yin, 2009). The population for this study constitutes all the previously disadvantaged contractors and consultants in the South African construction industry. According to Leedy and Ormrod (2015), sampling designs are appropriate for different situations and research questions. Thus, the researcher must select a sample from the targeted population, as it is impossible to collect data from the entire population (Taherdoost, 2016). Therefore, a sample was chosen from the population through convenient sampling techniques. Convenient sampling is selecting a sample from a qualified population readily available to answer the research questions. It assumes that the features of the sampled population correspond to that of the entire population (Leedy and Ormrod, 2015). Thus, only construction professionals in South Africa who form part of the previously disadvantaged individuals and are readily available to be interviewed were selected. The selection of only previously disadvantaged construction professionals enabled the researcher to acquire information from the phenomenon (BEE policy) under investigation. The researcher contacted 35 construction professionals whose details were available on the Construction Industry Development Board website for an interview, of which 21 responded. Leedy and Ormrod (2015) suggest that a qualitative study using in-depth interviews with a sample size between 5 and 25 is acceptable to yield reliable results. A study by Amoah and Bikitsha (2021) reached a saturation point on the 12th, although 15 participants were interviewed. Also, Hemink *et al.* (2017) reached saturation as the ninth participant in their study. In this study, the saturation point was reached at the 17th participant, where no new information emerged; thus, the 21-sample size used for the analysis is justified.

3.3 Data collection method

The study's data was collected during the COVID-19 restrictions and social distancing rules; thus, it was impossible to do a face-to-face interview with the participants. Therefore, the researcher used telephone interview techniques, calling the participants to explain their opinions on the structured open-ended interview questions. The interview took about 45 min to complete for each participant. The interview conversations were recorded accordingly using a cell phone audio recorder. According to Blumberg *et al.* (2008), a telephone interview is cheaper than a face-to-face interview due to reduced cost. A telephone interview is an effective way of collecting data, especially where the study participants are dispersed. Non-face-to-face interview techniques allow for participants' privacy and enhance their willingness to express their views, which would otherwise been withheld if the interviewer had been present (Polit and Beck, 2017). Open-ended interview questions allow researchers to get in-depth knowledge about the phenomenon because participants can express their views without limitations (Creswell, 2014). This study's interview method allowed participants to express themselves without any restrictions. The interviewer was also able to do a follow-up question for clarification, limiting the incidents of ambiguity and vagueness in the responses. The interview questions were divided into two sections: Section 1 deals with the participant's demographic (see Table 3), and Section 2 deals with the general perception of the BEE policy and their challenges with the BEE policy (see Tables 4 and 5).

3.4 Data analysis method

Qualitative contents analysis and Excel were used to analyse the collected data by generating themes, frequencies, and percentages. Polit and Beck (2017) state that qualitative

Table 3.
Participant's
demographic
features

Participants	Organisation type	Firm's location	Gender	Job title	Experience in the construction industry	Qualification
P1	Supplier of building materials	Bloemfontein	Female	Administrative assistant	4 years	Degree
P2	Contractor	Gauteng	Female	Quantity surveyor	2 years	Degree
P3	Contractor	Gauteng	Male	Construction project manager	5 years	Honours
P4	Contractor	Johannesburg	Male	Project manager	2 years	Degree
P5	Contractor	Pretoria	Male	Construction manager	8 years	Degree
P6	Consulting and construction	Johannesburg	Male	Construction project manager	10 years	Honours
P7	Consultants	Johannesburg	Female	Quantity surveyor	10 years	Masters
P8	Consultants	Johannesburg	Female	Quantity surveyor	2 years	Honours
P9	Consultants	Johannesburg	Female	Property administrator	2 years	Honours
P10	Consultants	Durban	Female	Project manager	15 years	Degree
P11	Consultants	Pretoria	Male	Quantity surveyor	5 years	Degree
P12	Contractor	Cape town	Female	Quantity surveyor	10 years	Honours
P13	Consultants	Cape town	Female	Construction technician	6 years	Masters
P14	Consultants	Pretoria	Male	Land surveyor	8 years	Masters
P15	Consultants	Durban	Female	Director	22 years	Degree
P16	Consultants	Bloemfontein	Female	Quantity surveyor	3 years	Degree
P17	Contractor	Johannesburg	Female	Junior site agent	1 year	Degree
P18	Consultants	Johannesburg	Female	Quantity surveyor	2 years	Honours
P19	Consultants	Vryheid	Male	Quantity surveyor	2 years	Honours
P20	Contractor	Mpumalanga	Female	Quantity surveyor	7 years	Masters
P21	Consultants	Pretoria, cape town	Male	Quantity surveyor	1 year	Honours

Source: Created by author

data is in narrative material as *verbatim* interaction between the interviewer and the participant. Thus, qualitative data analysis tries to organise, provide structure and produce meaning from the data. Therefore, in analysing the qualitative data received, the analysis of the thematic content proposed by Polit and Beck (2017), as described below, was adopted:

- *Step 1: Read all the participants' data and familiarise yourself:* The researcher repeatedly listened to the recorded interviews to understand and become familiar with the participants' narrations.
- *Step 2: Inspect each piece of data and extract significant statements related to the phenomenon:* The researcher then transcribed each interview into a Word document and underlined essential statements made by the participants.
- *Step 3: Formulate meanings:* The researcher then formulated the meaning by looking at the common statements in all the transcribed data.
- *Step 4: Organise the formulated meanings into clusters of themes:* The researcher then grouped the common statements into themes as indicated in Tables 2 and 3.
- *Step 5: Integrate results into an exhaustive description:* The researcher described these themes to reflect the common statements made by the participants for easy analysis.
- *Step 6: Produce the essential structure:* The researcher then presented the themes in a table format, and their frequencies and percentages were calculated.
- *Step 7: Seek authentication of the fundamental structure:* The researcher then verified the authentication of the structure by referring to past studies that used a similar qualitative analysis.

Data were presented in a table format, and participants were quoted *verbatim* in the discussion. The demographic features of the participants are shown in Table 3.

General perceptions	Frequency	Percentage
Has not fulfilled the intended purpose	7	35
BEE policy has helped previously disadvantaged	5	25
Improved fairness in the procurement system	3	15
Need strict enforcement	2	10
Increased opportunity for local companies	2	10
Decreased opportunity for local companies	1	5
<i>Total</i>	<i>20</i>	<i>100</i>

Table 4.
Participants' general
views on the BEE
policy

Source: Created by author

Challenges	Frequency	Percentage
Corrupt practices	8	38
Fronting of contractors and individuals	5	24
Prevent inclusiveness	4	19
Poor policy implementation	2	10
Loss if tender	2	10
<i>Total</i>	<i>21</i>	<i>100</i>

Table 5.
Participants'
challenges with the
BEE policy

Source: Created by author

Table 3 indicates that black contractors and consultants in the construction industry operate from the various provinces of South Africa. Females constitute 62% of the participants, while participants with over three years of experience in the construction industry constitute 57%. The respondents' lowest qualification is a bachelor's degree, indicating that the respondents are highly educated, and thus, the views presented are highly credible. Most (48%) participants work as quantity surveyors in their respective firms.

4. Findings

4.1 Participants' general perception of the BEE policy

Participants were asked to share their general views on the BEE concept in the public procurement system. As indicated in Table 4, most (35%) of the participants believe the BEE policy has failed to achieve its objectives. However, 25% believe the BEE policy has helped previously disadvantaged professionals in the construction industry. Again, 15% of the participants stated that the BEE policy had brought fairness to the procurement system, and 10% said that the policy needed strict enforcement and increased participation of local companies in the procurement system. Also, one person (4%) stated that the BEE policy had decreased local companies' opportunities.

4.2 Participants' challenges with the black economic empowerment policy

Participants were asked to share their opinions on their challenges with the BEE concept in the public procurement system. The majority (38%) stated corrupt practices, 24% mentioned contractor and individual fronting and 10% said poor policy implementation. Other challenges mentioned are losing tender (10%) and limiting foreign and experienced firms from participating (19%). The responses from the participants are indicated in Table 5.

5. Discussions

5.1 Black construction professional's challenges with the black economic empowerment policy

The participants' challenges with the BEE policy, as identified during the interview (see Table 5), were categorised into various themes and discussed accordingly, as shown below.

5.1.1 Theme 1: Corrupt practices. The issue of corrupt practices by procurement officials leading to the award of contracts to unqualified people was a significant issue raised by the participants during the interview. Participants believe tenders are awarded to firms who do not qualify under the policy due to conspiracy between the procurement officials and the owners of these companies for their benefit, disregarding the BEE policy objectives. For instance, P6 and P9 believe most qualified companies are overlooked in the contract award, whilst other companies use forged information to acquire contracts due to corrupt dealings by the procurers.

P6: "Corruption makes this a difficult policy to administer; most companies that comply with the requirements may still be overlooked due to other factors and activities that are not mandated."

P9: "The challenges becomes when non qualifying companies uses falls information to be given preference and this has flooded the market resulting on the system failing to achieve what it was established for."

P8, on the other hand, described the policy as ineffective because of the prevalence of corruption.

P8: “It is important to note that the execution of the policy is not very effective. A lot of corruption is still prevalent. Many businesses use black people, people living with disabilities and woman to be on the forefront of their businesses in order to accredited with BBBEE certificates that empower bidders to obtain points. This means that the economic transformation is not achieved and the white minority are still beneficiaries in the public sector. Monitoring and evaluation needs to be done in to ensure that the eradications of the past are addressed effectively.”

The issue of corrupt practices by procurement officials was also identified by [Sewpersadh and Mubangizi \(2017\)](#), who identified favouritism and fraud in the BEE application. Again, [SAPA \(2014\)](#) reports that many corrupt activities have described the policy as cancer to economic development since introducing the BEE policy. BEE policy has been described as a failure due to its inability to reduce unemployment and eradicate poverty and inequality due to government officials’ corrupt practices; thus, the policy should be scrapped from the procurement process ([Krüger, 2016](#)). A study in Ghana by [Amoah and Shakantu \(2019\)](#) indicates that local contractors hardly get access to government contracts due to corrupt practices by procurement officials. [Hughes et al. \(2019\)](#) suggest that SMEs are awarded a small portion of government contracts due to bid-rigging and corruption by procurement agents. One of the significant BEE policy objectives is enhancing the participation of previously disadvantaged citizens via government procurement practices. Thus, if those who do not qualify are awarded contracts, the previously disadvantaged group will still be excluded from government contracts, defeating the policy objectives.

5.1.2 Theme 2: Fronting. Participants also raised contractors’ and individuals’ fronting for unqualified companies under the BEE policy due to their status. According to the BEE policy, companies must register and be given certificates that indicate their BEE status; however, companies that do not even have a certificate can acquire governments. This is because the companies with the required certificate acquire the contracts and sell or hand over the project to unqualified firms to execute the works. Thus, practices prevent the BEE-qualified companies from getting access to government projects, thus defeating the policy’s objectives. P5, P8 and P19 state that black construction professionals are used to front unqualified companies to acquire government contracts.

P19: “Most of the companies use black professionals as their face but they are not making decisions. Black professionals are hired but they are not transformed. Access to finance is still an issue for black people.”

P5: “There is still many companies fronting to benefit from the BEE score. Black companies win contracts and still go back and sell, subcontract or even sign cession with white companies to do the work. That undermines the whole idea of BEE.”

P8: “It is important to note that the execution of the policy is not very effective. A lot of corruption is still prevalent. Many businesses use black people, people living with disabilities and woman to be on the forefront of their businesses in order to be accredited with BBBEE certificates that empower bidders to obtain points. This means that the economic transformation is not achieved and the white minority are still beneficiaries in the public sector. Monitoring and evaluation needs to be done in to ensure that the eradications of the past are addressed effectively.”

Again, P6 and P14 suggest manipulation in the BEE policy application whereby previously advantaged firms use previously disadvantaged individuals for fronting by making them shareholders with no authority in decision-making concerning the company’s management.

P6: “We have seen the manipulation of the system by previously advantaged private companies who use previously disadvantaged faces as fronting. The MOAs of these companies will depict that the previously disadvantaged shareholders have the least shares and some are not even involved in the decision makings of the company. Additionally, government officials use the policy to enrich themselves through bribery.”

P14: “The policy should be amended and ensure that only people who qualify for the projects are prioritised and not based on gender or colour. It serves no purpose to have a 51% black owned company where those black people are only serving on positions that are not influential in the organisation and they are only there to meet the BBBEE policy.”

According to [Jeffery \(2014\)](#), the BEE policy is bedevilled with nepotism, fraud, and what is known as “tenderpreneurs” in procurement practices. These “tenderpreneurs” front for the unqualified firms in the tender process by using their BEE status to acquire government projects and sell or transfer the project to other firms, thus affecting the policy objective negatively. [Storsjö and Kachali \(2017\)](#) suggest that using public procurement to achieve socio-economic policies is usually hampered by market realities and the responsibilities of the procurement partakers. Again, due to knowledge limitations and resources, procurement practitioners cannot achieve policy objectives. It is, therefore, not surprising for [Ibrahim et al. \(2017\)](#) to opine that the effectiveness of using public procurement to achieve specific policies is questionable in developing countries. These findings imply that those for whom the policy was instituted are the people preventing the achievement of the policy objectives.

5.1.3 Theme 3: Prevent inclusiveness. The BEE policy’s lack of inclusiveness in the public procurement process was also a challenge mentioned by the participants. Participants believe that the policy disadvantages experienced foreign contractors in partaking in the procurement process as they cannot meet the requirements. According to the BEE policy, for a company to achieve higher points, most owners should be black citizens; thus, if an experienced contractor does not have this ownership arrangement, the chance of winning a government contract is almost zero. Also, a foreign firm may find it challenging to access the government if most shares are not transferred to black citizens. P4 notes that international firms without the required BEE status would find it difficult to get government contracts, depriving the country of skilled workers.

P4: “Limiting international organisations without the required BBBEE level limits the amount of skilled international organisations who could enter our industry through these large organisations. This can affect the level of innovation in our industry.”

P12 and P16 complained that although the company has remarkable experience in the construction industry, they struggle to compete with inexperienced contractors for government projects due to their BEE level. Some of the responses from the participants are stated below:

P12: “We are fortunate to be led by Lucas Tseki as our company CEO, whom drives the process of BBBEE to ensure our company comply with regulations in order for us to tender on public works. However, as we are a big and established company with many years of experience, we find it hard to tender against other contractors whom does not necessarily have the skills and experience and are willing to do the work at very low prices. Some of these contracts which has been awarded, end up with delays because of the unrealistic low tender prices, which cause for the projects not to be finished within appointed budgets.”

P16: “It has become evident that during the adjudication of tender, that the tender with the lowest price is not awarded the project, not based on the past experiences but by BEE levels.

More often than usual the awarded contractors are less experienced and inexperienced with market related items.”

These findings also collaborate with [Iheduru's \(2004\)](#) findings that the BEE is a preferential procurement policy to facilitate black-owned companies' access to government contracts. Again, [Jack and Harris \(2007\)](#) suggest that the government prefers BEE-compliant firms when selling state assets or entering into a partnership with firms. However, [Jack and Harris \(2007\)](#) state that rather than using public procurement for economic policy, it should be used to promote businesses where everyone can participate. France has also found that the strictness of public procurement policy affected market structure and local firms' relationship with foreign firms and networks ([Mamavi et al., 2017](#)). These findings imply that local firms may find it challenging to form networks internationally due to the requirements of the BEE policy in terms of the level required and shareholding arrangement to have a greater chance of securing government contracts. Again, due to the inability of experienced firms to access governments, skill training, transfer and project quality may be negatively affected.

5.1.4 Theme 4: Poor policy implementation. Poor implementation of the BEE policy, thereby preventing the beneficiaries from benefiting, was also a significant challenge raised by the participants. The participants believed the policy was noble, but most people would not get government contracts due to poor implementation by the procurement entities. According to P2, there is no policy administrative monitoring strategy to ensure effective policy implementation to benefit the previously disadvantaged.

P2: “Unfortunately, the BBBEE is just an administrative requirement. I don't see it being fully checked in terms of the administration of it or the actual carrying out of it. So it does not really get to the right purpose.”

P9 also suggests that monitoring and evaluation should be instituted to ensure effective implementation and appropriate people benefit from the policy. Some of the responses from the participants are stated below;

P9: “It is important to note that the execution of the policy is not very effective. A lot of corruption is still prevalent. Many businesses use black people, people living with disabilities and woman to be on the forefront of their businesses in order to accredited with BBBEE certificates that empower bidders to obtain points. This means that the economic transformation is not achieved and the white minority are still beneficiaries in the public sector. Monitoring and evaluation needs to be done in to ensure that the eradications of the past are addressed effectively.”

According to [Russell and Meehan \(2014\)](#), the procurement agents should comply with the system's regulations for public procurement to achieve the desired policy goal. Therefore mechanisms should be instituted to ensure compliance with policy regulations and effective implementation. Again, [Ibrahim et al. \(2017\)](#) found that the effectiveness of procurement policy implementation is often weakened because of the lack of proper monitoring systems and that procurement regulations do not necessarily guarantee compliance. A study in Ghana reveals challenges of procurement policy, including weak institutions and enforcement mechanisms, leading to compliance problems among procurement officials ([Ibrahim et al., 2017](#)). These findings imply that previously disadvantaged construction professionals are still not effectively benefiting from the BEE policy; thus, an effective

monitoring system should be implemented to ensure the achievement of the policy objectives.

5.1.5 Theme 5: Loss of tender. The BEE policy has also led to the loss of contracts to some beneficiaries due to their inability to meet the requirements. Some participants stated they had partnered with previously advantaged contractors to get experience. Due to this arrangement, they cannot meet the requirements and thus lose their tender. P1 states that although they have experience in project execution, they lose contracts because their BEE level is not high; therefore, the BEE point allocation system should be removed from the adjudication process.

P1: "Various tender applications have been lost due to the BBBEE consideration and point allocation resulting in various firms not being among the highest point allocations, but they have the technical skills and experience to complete the project within the tender amount. Therefore, the BBBEE point allocation should be left out, or added as an option."

P15 also collaborates this narration that they are disadvantaged in winning the tender due to their low-level BEE status. Some of the responses from the participants are stated below;

P15: "As stated, being the lead consultant in a consortium and having all other consultants being paid through your organisation places one at a disadvantage when it comes to fulfilling the requirements of BEE to attain a level 1 BEE status."

These findings correspond with [Ponte and Van Sittert's \(2007\)](#) views that government expenditure is geared towards entities with high-rated BEE points and compliance. Again, [Jack and Harris, 2007](#) suggest that the government prefers those with high BEE levels when entering into a partnership with private entities. Note that one of the objectives of the BEE policy is to enhance previously disadvantaged people's ownership, and the firm's BEE level will only be high if blacks are the majority of the firms. This means that the concerns of participants instead support the policy objectives. [Hughes et al. \(2019\)](#) state that SMEs cannot fully partake in the procurement policy due to their lack of capacity to meet the set requirements. These findings imply that the policy objective of considering and enhancing black-owned firms works; however, some concessions should be made to firms partly owned by blacks without a higher BEE level status.

6. Summary of the findings

A summary of the challenges the black construction professionals have with the BEE policy is shown in [Figure 1](#).

7. Conclusion

Public procurement policies are used by countries to advertise socio-economic challenges and to address the concerns of the marginalised. After disposing of the apartheid regime, the ANC government sought to tackle the past injustices and discriminatory practices against black citizens by the apartheid government. The government thus 2003 introduced the BEE Act as a regulatory framework aimed at emancipating black citizens economically by enhancing their access to government contracts. This study was undertaken to identify the policy beneficiaries in the construction sector's challenges since its divestiture. The findings revealed black construction has challenges with the BEE policy, such as corrupt practices, fronting contractors and individuals for unqualified firms, preventing the participation of experienced and foreign firms, poor policy implementation with no monitoring mechanism,

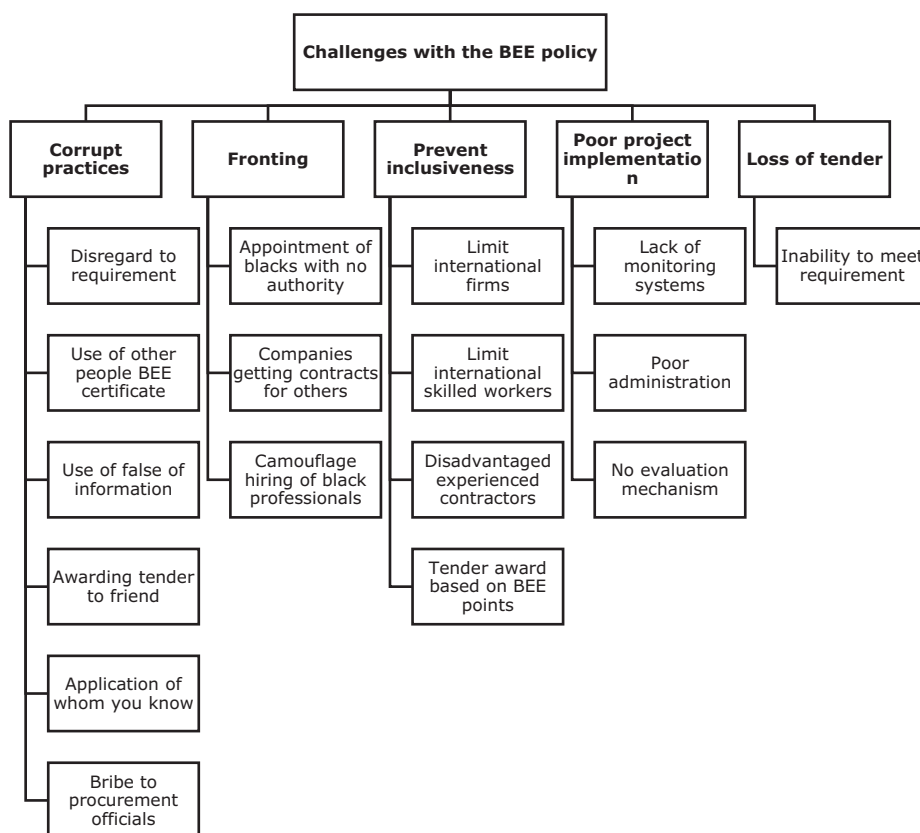


Figure 1.
Black construction
professionals'
challenges with BEE
policy

Source: Created by author

and loss of contracts. These issues negatively affect the policy beneficiaries from fully benefiting from the BEE policy, thus defeating the policy objective.

Based on the findings, the study recommends that the government re-evaluate the policy to address corrupt activities perpetrated by procurement officials and policy implementers to ensure the policy's objective achievement. Tenders should be awarded to deserving individuals through scrutiny processes to eliminate fronting practices and selling contracts by qualified firms to unqualified firms. Proper monitoring and evaluation mechanisms should be formulated to guard policy compliance. The BEE point system can be re-examined to encourage mentorship between the established and emerging black construction firms to enhance the black construction professionals' skill transfer and capacity building.

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Further reading

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