

2022/2023 FINANCIAL YEAR

TRANSFORMATION COLLABORATIVE COMMITTEE:

**PROCUREMENT, POLICY, LEGISLATION
AND SOCIO-ECONOMIC DEVELOPMENT**

PROGRESS REPORT

SEPTEMBER 2022

Table of Contents

1. Purpose.....	4
2. Background.....	4
3. CBE Mid-Term Priorities.....	5
4. CBE Mandate Aligned to PPLSED TCC	5
5. Procurement, Policy, Legislation, and Socio-Economic Development TCC Quarter 2 Progress Report	6
6. Key Issues.....	11
7. Conclusion and Way Forward.....	12

ACRONYMS

APP – Annual Performance Plan

CBE - Council for the Built Environment

DPWI - Department of Public Works and Infrastructure

TCC - Transformation Collaboration Committee

ToR - Terms of Reference

PPLSED – Procurement, Policy, Legislation and Socio-Economic Development

1. Purpose

The purpose of this report is to provide an overview of the activities undertaken by the Procurement, Policy, Legislation and Socio-Economic Development Transformation Collaborative Committee (PPLSED TCC) during Quarter 2 of the 2022/2023 financial year.

2. Background

The Council for the Built Environment (CBE) is a statutory body established under the Council for the Built Environment Act (No. 43 of 2000). It is an overarching body that coordinates the following six councils for the built environment professions - Architecture, Landscape Architecture, Engineering, Property Valuation, Project and Construction Management, and Quantity Surveying – and through memoranda of understanding these include Town and Regional Planning, Land Surveying and Environmental Assessment. Sections 3(a) and (e) of the CBE Act mandate the CBE to promote and protect the interests of the public and promote appropriate standards of health, safety and environmental protection within the built environment.

In line with the above, Transformation of the Built Environment Professions is one of the key imperatives of the CBE. As per the CBE Strategic Plan, the CBE is to facilitate participation by the Built Environment Professions in integrated development in the context of national goals, specifically regarding Transformation as a key priority of the sixth term government. The CBE's third Transformation Indaba, hosted in October 2019, produced a number of key resolutions, in relation to challenges impeding Transformation in the sector. The CBE expects to deliver on these resolutions to ensure transformational progress. The main vehicle for driving these activities is the Transformation Collaborative Committees (TCCs), constituted in collaboration with the Department of Public Works and Infrastructure (DPWI) to specifically address these challenges. These TCCs, with support from the DPWI, are commissioned to engage with all relevant departments and industry role players to resolve key challenges identified by stakeholders. These Transformation Collaborative Committees (TCC) comprise of the following:

- i. Health, Safety, Public Protection and Universal Access (HSPPUA)
- ii. Occupational Specific Dispensation (OSD)
- iii. Procurement, Policy, Legislation and Socio-Economic Development (PPLSED)
- iv. Professions Skills and Capacity Development (PSCD)
- v. Women Empowerment and Gender Equality (WEGE)

Procurement, Policy, Legislation and Socio-Economic Development (PPLSED)

The primary task of the PPLSED TCC is to ensure that procurement systems achieve the transformation goals set out in the Constitution, sections 217(2) and (3). This TCC investigates and establishes the impact of among others, the Preferential Procurement Policy Framework Regulations in the Built Environment Sector to propose the required procurement reforms. The inputs would be incorporated in the proposed Procurement Bill, yet to be adopted by Cabinet. The working committee looked at the challenges relating to legislation impacting transformation in the Built Environment and the feasibility of bringing back the Roster system is to be investigated.

3. CBE Mid-Term Priorities

In the medium-term the TCC is paying attention to these three priorities:

- a. Transforming the Built Environment
- b. Producing skilled Built Environment Professionals (fit-for-purpose)
- c. Expediting the empowerment of women, youth and persons with disabilities

The CBE will drive programmes aimed at:

- ✓ creating economic opportunities for previously disadvantaged groups (professionally registered persons)
- ✓ reforming policies that hinder transformation in the Built Environment

4. CBE Mandate Aligned to PPLSED TCC

The PPLSED TCC is established in terms of the following sections of the Council for the Built Environment (CBE) Act, (Act 43 of 2000):

3(b) promote and maintain a sustainable built environment and natural environment;

3(d) facilitate participation by the built environment professions in integrated development in the context of national goals;

3(h) serve as a forum where the representatives of the built environment professions may discuss the relevant –

(v) legislation impacting on the built environment;

4(a) advise Government on any matter falling within the scope of the built environment, including socio-economic development, and for this purpose carry out such investigations as it or the relevant Minister deems necessary;

4(f) provide advice and consultation on national policy that could impact on the built environment, human resource development in relation to the built environment professions, and the recognition of new professions;

The primary mandate of the Committee is to:

- (1) ensure that procurement systems achieve the transformation goals as set out in Section 217(2) and (3) of the Constitution
- (2) identify existing gaps in the current procurement policies and propose amendments that will achieve the primary transformation objectives
- (3) ensure that the proposed Procurement Bill is in line with section 217 of the Constitution in its entirety.
- (4) give impetus to the State's mandate in relation to Government's role (Infrastructure)

5. Procurement, Policy, Legislation, and Socio-Economic Development TCC Quarter 2 Progress Report

5.1 Overview

In order to deliver on the PPLSED TCC's objectives, a number of preliminary investigations needed to be undertaken in the previous financial year to lay the foundation of the TCC's work and establish baseline information as a point of departure. To this end, the following reports were finalised in Quarter 2 and tabled at the Built Environment Matters Committee (BEMC) sitting on 12 May 2022:

- a) Report on the review of the previous and current procurement systems (amongst others, the Consultants Roster System) with the purpose of coming up with more transformative systems
- b) Report on all procurement legislation (such as the B-BBEE Act, PPPFA, Competition Commission etc.) to benefit targeted groups
- c) Report on foreign professional practices appointed by the public sector
- d) Report on the promotion of the employment of South African Built Environment national based on the survey of foreign nationals employed by government

Further to this, the TCC Terms of References (TOR) and list of deliverables were revisited to ensure alignment to the CBE Act objects and to incorporate key aspects of the CBE

Transformation Strategy. Lastly, the PPLSED developed a workplan for the BEMC's consideration for continuous reference and monitoring against goals, objectives, tasks set out by the PPLSED TCC.

5.1. Quarterly Progress

The section below provides an update on the PPLSED TCC in Quarter 2 (July – September 2022) of the 2022/2023 financial year.

5.1.1. Quarter 2 (6 September 2022)

On 6 September 2022 the second PPLSED TCC was hosted. The specific purpose of this engagement was to finalise the refined TORs, approve reports for recommendation at the BEMC sitting and to develop a workplan for the committee's work for the current financial year. A summary is provided below on these areas of discussion.

5.1.1.1. Terms of Reference

The refined PPLSED TOR was tabled at the meeting of 11 April 2022 for input by committee members. The committee proposed that the PPLSED should be renamed into only Policy and Legislation Transformation Collaborative Committee (PL TCC) as transformation was broadly driven on the two areas of focus but also to help embed issues of procurement and socio-economic development within the work of the committee.

5.1.1.2. Baseline Reports

a) Report on the review of the previous and current procurement systems (amongst others, the Consultants Roster System) with the purpose of coming up with more transformative systems.

The report provides a descriptive analysis of targeted procurement, consultants roster, and preferential procurement systems. The report also discusses procurement frameworks, policies, standards, codes, regulations, and legislation that regulate procurement processes. The findings indicated that targeted and preferential procurement systems were not working adequately or satisfactorily. The recommendation was as follows:

- The Consultants roster system, used in the public sector, promotes procurement that is fair, competitive, and proven to be economical and efficient. The tenets and

structure of this system must be utilised as the backbone in developing more transformative procurement systems.

b) Report on the realignment of all procurement legislation (such as the B-BBEE Act, PPPFA, Competition Commission etc.) to benefit the targeted groups.

The report outlines the strengths and shortcomings of procurement legislation, together with resolutions of the Transformation Indaba to lay out relevant recommendations. A key finding was the loopholes identified in the BEE e.g. level 1 requirements. The recommendations are as follows:

- I. Establish a system which favours contractors who are professionally aligned to certain projects
- II. Focus on the Skills Development component of BEE to drive transformation through partnership with tertiary institutions to increase the skills pipeline
- III. Balance all seven components strategically to drive transformation in specific sector or organisations

c) Report on foreign professional practices appointed by the public sector

The limited information revealed the following breakdown:

- Total number of foreign employees in all institutions = 42
Senior and Top management (levels 13-16) = 2%
Highly skilled supervision (levels 9-12) = 57%
Highly skilled production (levels 6-8) = 31%
Skilled (level 3-5) = 7%
Lower skilled (levels 1-2) = 2%
All the other salary bands have no foreign employees.
- In the annual reports analysed, information relating to foreign professional service expenditure is not available. The information on foreign individual appointments shows that 57% of foreign employees occupy the Highly skilled supervision (level 9-12) salary band, however on the same salary band, local employees only make 8% of their population. Based on this analysis, it can be concluded that more money is spent on foreign individual appointments.

d) Report on the promotion of the employment of South African Built Environment national based on the survey of foreign nationals employed by government

The following key observations were made from the limited information received:

- South African legislation sway employers towards employing South African citizens. Employing foreigners is deemed a short-term measure to bridge the skills shortage within an employer's business and to facilitate the transfer of skills
- Employers should, therefore, ensure that a skills transfer plan is implemented to ensure that the relevant skills are transferred to a South African citizen, and that the necessary time and resources are invested in transferring and retaining the skills in South Africa

5.1.1.3. 2022/23 Annual Performance Plan (APP) target

The following target was presented as part of the PPLSED TCC deliverables to be monitored and reported on a quarterly basis.

a) One research report analysing the implementation of legislation and policies impacting the built environment.

The objectives of the programme are to:

- identify and examine key policy frameworks impacting the built environment
- analyse implementation predicaments on key policy frameworks impacting the built environment
- propose alternatives for effective implementation and alignment of policy frameworks impacting the built environment

The quarterly schedule of the programme would unfold as follows - Quarter 1: Concept Document; Quarter 2 and 3 - Draft Report; Quarter 4 - Final Report. The lack of meaningful participation by relevant stakeholders was identified as a possible risk.

5.1.2. Quarter 1 (11 April 2022)

On 7 June 2022 the second PPLSED TCC was hosted. The specific purpose of this engagement was to adopt the finalised TORs and recommend the workplan developed for the current financial year. A summary is provided below on the areas of discussion outlined above.

5.1.2.1. Terms of Reference

The finalised PPLSED TOR was tabled at the meeting of 7 June 2022 for adoption by committee members. The committee agreed to have the name of the committee reverted back to Procurement, Policy, Legislation and Socio-Economic Development (PPLSED) to keep issues of procurement elevated as per feedback from the BEMC. It was agreed that all the TCC TORs will be tabled with Council and TCC Chairpersons in July 2022 to ensure alignment and standardisation to the CBE objects.

5.1.2.2. Workplan

The following deliverables were tabled for the committee's endorsement:

- a) Facilitate BE comments on procurement legislation (such as the B BBEE Act, PPPFA, Competition Commission etc.) to benefit targeted groups
- b) Monitor proper implementation of empowerment legislation and policies
- c) Policy workshop on infrastructure procurement (three webinars)
- d) Assess the impact of the Preferential Procurement Policy Framework Regulations in the Built Environment Sector and propose potentially required reforms. These recommendations should also be incorporated into the proposed Procurement Bill currently published for comment
- e) Participate in the public comment process on the National Infrastructure Plan, 2050

Going forward, the activities will be reported on as standing items on a quarterly basis.

5.1.2.3. 2022/23 Annual Performance Plan (APP) target

a) One research report analysing the implementation of legislation and policies impacting the Built Environment by 31 March 2023

A concept document has been developed on the following policy frameworks impacting the built environment:

- i. Public Procurement Bill, 2020
- ii. Broad-Based Black Economic Empowerment (BBBEE): Codes of Good Practice
- iii. Property Sector Charter
- iv. Construction Sector Charter
- v. B-BBEE Advisory Council

Further to this, an evaluation of B-BBEE Strategy Implementation noted a substantial increase in the number of black:

- i. ownership and control of existing and new enterprises
- ii. ownership and control of existing and new enterprises in priority sectors of the economy that government has identified in its microeconomic reform strategy
- iii. new enterprises, black-empowered enterprises and black-engendered enterprises
- iv. executive and senior management of enterprises
- v. proportion of ownership and management of economic activities vested in community and broad-based enterprises (such as trade unions, employee trusts, and other collective enterprises) and co-operatives

6. Key Issues

Challenges:

In effecting section 3(h) of the CBE Act 43 of 2000, the CBE facilitated a virtual round-table discussion on 26 August 2022 on the Asset Life Cycle with a cohort of built environment professionals and retired engineers and the Western Cape Department of Transport. The engagement noted the following challenges:

- i. The Asset Management Cycle is not fully implemented; there needs to be a model to curb corruption
- ii. Consequence management in public procurement processes is not convincing

- iii. Cost-effectiveness vis-a-vis quality of the delivered infrastructure, and impact on infrastructure maintenance

Highlights

The round-table engagements resolved to:

- i. endorse the Asset Management Cycle in recognising the importance of relevant data to inform decision-making
- ii. support strengthened policy implementation where policy gaps are identified
- iii. utilise the lessons drawn from the WCG Masakh'isizwe Bursary Programme, particularly implementation strategy, on massification of BE skills development programmes
- iv. continue exploring and, where necessary lobbying, for the Roster System to advocate for Public Procurement

7. Conclusion and Way Forward

It was emphasised that the committee should prioritise initiating engagements with infrastructure departments and implementing agents for further clarities on policy positions and in relation to the roster system. A typical example is the recent request from the Eastern Cape Provincial Department of Public Works. The PPLSED TCC Workplan will serve as a tool for monitoring and reporting progress throughout the financial year going forward.