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Critical issues from final Construction Sector Code

Note: You have a month to implement... and what a month that will be

By Deon Oberholzer, CEO of Gestalt Growth Strategies

The final Construction Sector Code was finally gazetted on December 2017 – notably just two weeks before the builder industry’s holiday... but at least better than the repeal of the old one just days before the financial year end of most companies in 2016. In reviewing the final document against the draft, CEO of Gestalt Growth Strategies Deon Oberholzer found that most of it was left unchanged, but there were a few earthquakes set to shake some well-constructed BEE strategies to their foundations.

Some of the last-minute changes in the newly-gazetted final Construction Sector Code could have a significant impact on the industry, and the look and feel of those changes bears the hallmarks of one or more highly influential lobby groups or agents with a radical agenda pushing amendment through without proper consultation. Anyone up for another Mining Charter extravaganza?

What follows are some points I noted in my review.

Multinational BEP Ownership

The term “BEP” refers to Built Environment Professionals such as consulting engineers, architects and other professional service providers in the construction industry, and the news is dire for multinational BEPs. They apparently should please just leave the country, as it appears internationally-owned consulting firms will no longer be considered for government contracts in South Africa. If you do not want to exit completely, please sell the business to your black executives. If they cannot afford it, just close the door on your way out, please.

Sanral published its draft procurement policies late last year, noting that they will only do business with companies that have 51% BEE ownership. The Amended Construction Sector Codes (CSC) sets out a new and highly controversial disqualifier for BEPs that only half of your BEE shareholding would count if the business is not more than 50% owned by its own South African executives.

So, by combining these two, an internationally owned BEP is automatically disqualified.

I believe there will be some pushback on this, but it might not be particularly vocal or legal. The industry works predominantly on tenders for big projects and we all know that



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if you make too much noise, your tender submission may just fall off the back of the truck on the way to the tender committee.

Procurement from black-owned designated group suppliers

First the definition: A “black designated group supplier” is defined as “a company that is at least 51% owned by black people that are unemployed, youth, persons with disabilities, living in rural areas and/or military veterans”.

Because many BEP’s subcontract work to other BEP specialists, I somehow doubt that the incidence of designated BEPs are ten times as high as the incidence of designated suppliers of anything else, but there it is: BEP’s have to source 20% of all their procurement from this tiny sector of the economy, please. The equivalent for everyone else in terms of the BEE Codes and the Sector Codes is only 2%.

Oh, and foreign employees are no longer recognised as employees, even if they are in a formal employment relationship. Their salaries are now part of “procurement”. This is a really weird last minute addition that happens to be entirely counterproductive.

If you do have any foreigners working for you, get them to become freelance consultants, invoice you and – *viola* - you are now dealing with level 4 EMEs with 100% procurement recognition, a nice reduced skills development target and less pressure on management transformation.

For the love of me, I cannot figure out how this promotes any real transformation.

The Construction Sector Council

Now with teeth. One of the highlights in the CSC is that the role of the Construction Sector Council (CSCC) has been strengthened to an executive authority with the mandate to monitor transformation in the sector. With the President Elect Cyril Ramaphosa having built his election platform on a commitment to root out government corruption and state capture, we can expect an equally hard push to get rid of in corruption and fraud in business. And for that, the BBEE Commissioner and the CSCC will work together to take aim at BEE fronting in the construction sector.

Construction companies in the sector with a February year end have but a few weeks to get their house in order or risk being out in the wilderness for a year. Companies should remember that the measurement periods may now only be the actual financial year of the entity. So if you miss this year, the next window to do something is a year away.

Steer clear of any form of fronting, though. As mentioned, the push against corruption will surely – after the widespread and ongoing reporting of the erring of companies such as



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KPMG, McKinsey, SAP and others – include businesses of all sizes. The new government, whoever it may include, will be obliged to carry out a visible “witch hunt” among those who feel that they can flout the rules because others do.

For those with a February year end, if you think you can relax until a later date, I think you’re in for a rude awakening. And there is likely to be an even ruder awakening for those who think they can blame government corruption for dodgy practices or non-compliance with Sector Codes. Trust me on this one.

Ends

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