

# ITHALA'S BLACK ECONOMIC EMPOWERMENT POLICY

## 1. INTRODUCTION

Recognising that some communities have been disadvantaged by policies of the past, Ithala Dev. Finance Corp. Ltd (Ithala) has decided to formulate its own Black Economic Empowerment Policy, with the intention of effectively and efficiently redressing the imbalances of the past. Proposed focus areas have been identified and developed to ensure that the implementation of this policy is both easy and measurable.

## 2. DEFINITIONS

- 2.1. Ithala recognizes that an “**Historically Disadvantaged Individual**” (HDI) is a South African Citizen who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No 200 of 1993) (“the Interim Constitution”); and/or who is female; and/or disabled, however, it should be noted that a person who obtained a South African citizenship on or after the coming into effect of the Interim Constitution, is deemed not to be an HDI.
- 2.2. Ithala regards a **Priority Population Group** (PPG) as HDIs who fall into population groups that were not offered a franchise in the national elections before or after the introduction of the 1984 tri-cameral parliamentary system and who only received a franchise during 1994.
- 2.3. “**Set Asides**”, for purposes of Black Economic Empowerment (BEE) is defined as a mechanism developed by Ithala that ensures that the procurement of goods and services is strictly reserved for PPGs. At the commencement of Ithala’s BEE policy, the value of the set asides has been set at R150 000. In keeping with the market trends and

good practice, the Rand value of the “set asides” category will be reviewed from time to time.

- 2.4. **“Connected Person”** in relation to a person that is involved in Ithala’s tender process means any person that stands to benefit directly or indirectly from a tender award or any relative of such a person, or any beneficiary of a trust or legal entity related to such a person, or any member or shareholder of a close corporation or company related to that person.

### **3. THE OBJECTIVES OF THIS POLICY**

Within the framework of Ithala’s BEE policy, the objectives are:

- 3.1. to redress the imbalances of the past by developing specific principles to achieve social and economic equity;
- 3.2. to make Ithala the leader that sets the trend in BEE policy and implementation; and
- 3.3. to bring about a policy that is broad based, simple and flexible and complies with legislation.

### **4. PROPOSED FOCUS AREAS**

#### **4.1. Procurement of goods and services by Ithala**

- 4.1.1. One of the objectives of the BEE policy is to increase the procurement of goods and services by Ithala from HDI companies or companies in which HDIs have an interest, through the use of the scorecard approach.
- 4.1.2. In respect of discretionary procurement of goods and services, Ithala's goal is such that a minimum of 65% of the total amount of these purchases should be conducted through HDI companies or companies that HDIs have an interest in by the 2005/6 financial

year, with a minimum of 45% to be achieved in the 2003/4 financial year.

- 4.1.3. In support of increased procurement by HDI companies or companies in which HDIs have an interest, Ithala will seek to expand its supplier development programs to ensure that such enterprises are created and are able to meet the requirements of purchasers in the public sector.
- 4.1.4. Ithala will also negotiate with other parastatals and public entities in order to access their respective databases pertaining to HDI companies and companies in which HDIs have an interest. In this way, experienced suppliers will be identified and where appropriate added to Ithala's database.
- 4.1.5. Ithala will have 'set asides' for BEE purposes, which will be all procurement of goods and services that are valued at R 150 000 and below, in favour of PPG's.
- 4.1.6. Certain contracts will be sub-divided into smaller components so as to make the entry point for HDI companies more readily accessible.
- 4.1.7. If this is impossible, a successful Affirmable Business Enterprise must commit itself in respect of BEE. This will be a standard condition included in any contract that may be entered into by Ithala in respect of its procurement.
- 4.1.8. A central procurement body will be created, and will be called a BEE Council, which will actively manage and control all procurement of goods and services by Ithala business units.
- 4.1.9. Ithala will, proactively and in keeping with BEE trends, create a bias in the adjudication process, taking into account the extent to which people were discriminated prior to 1994, thereby increasing the proportion of business being awarded to businesses from PPGs.
- 4.1.10. Ithala may creatively negotiate its procurement conditions and procedures where necessary to allow for businesses from HDIs to conduct business with it.

## **4.2 Provision of finance to SMME's**

- 4.2.1 Ithala's main aim in respect of the provision of finance is to increase funding to HDI companies or companies where HDIs have an interest in. It is recorded that a 50% commitment is currently in place for the 2003/2004 financial year. Ithala, however, has a target of 65% of the total amount in respect of the 2005/2006 financial year. The financing of this process is strategically important for the economy, as BEE must have a credible financing component in order to succeed.
- 4.2.2 Preference will be given to HDIs that are actively managing and controlling the company as Ithala believes that operational involvement is equivalent to skills transfer.
- 4.2.3 Ithala will find the most appropriate way to finance the business finance advisory centre such that it is not only limited to providing assistance with regard to developing business plans but also helping to establish strong networks with other role-players, whilst simultaneously facilitating over R10 million deals on behalf of HDIs. Ithala may, however, incorporate the cost thereof in the loan amount.
- 4.2.4 Ithala may also enter into joint funding initiatives with Development agencies such as, Khula, IDC, NEF, Umsobomvu, etc, in order to leverage costs and assist HDI companies.
- 4.2.5 Ithala will use innovative marketing methods in order to highlight its improved approach, which will be driven by a more concerted effort by Ithala's marketers to attract PPG's.

## **4.3 Formation of partnerships and joint ventures**

- 4.3.1. The main objective in this regard is to find value adding partners who share Ithala's views on BEE and who will be able to contribute meaningfully in the partnership or joint venture and the South African economy at large.

- 4.3.2. Ithala recognises that its BEE strategy will not be effective if it acts alone without the support of the private sector. Strategic partnerships will therefore need to be established between Ithala and organizations or groupings, such as
  - 4.3.2.1. BEE private sector;
  - 4.3.2.2. Trade Unions; and
  - 4.3.2.3. Community based organizations (Stokvels, Women's Organisations, Educational Institutions etc).
- 4.3.3. A strategic partner should take a long term view by training and developing entrepreneurs inside and outside their companies. Infrastructure sharing, where possible, must be used as a means of achieving this goal.
- 4.3.4. Ithala may act as a facilitator in encouraging joint ventures between traditional suppliers and HDI suppliers for purposes of skills transfer.

#### **4.4. Unacceptable practices for joint ventures / sub-contracting / consortia**

Ithala, in line with the Government's guidelines on procurement reform, considers the following to be unacceptable practices in joint venture / subcontracting / consortium agreements.

- 4.4.1. A right of set-off in favour of the employing contractor, in other words the employing contractor having the right to unilaterally decide to set-off the sub-contractor which he nominated at tender stage and which was approved by Ithala, without proper approval by Ithala.
- 4.4.2. Authoritarian rights given to the employing contractor with no recourse to independent adjudication of disputes.
- 4.4.3. Pay-when-paid payment procedures where payments to the subcontractor are delayed unnecessarily.
- 4.4.4. Unreasonable retention money percentages and periods, or any other contract conditions which are more onerous than those which exist in the main contract.

- 4.4.5. Surety requirements for contracts where the main contract does not require such sureties from the main contractor.
- 4.4.6. Where formal proceedings exist for dispute resolution. Since BEE subcontractors can often not afford the high cost of legal proceedings to settle disputes, the contract should make provision for less formal but nevertheless objective and user friendly methods to settle disputes between the employing contractor and the sub-contractor (e.g. an ombudsman or an arbitrator).
- 4.4.7. Where there is significant shareholding but no decision making power on the part of the HDI partner, such a person will be deemed to be fronting and the relevant penalties will be applicable. Penalties may include:
  - 4.4.7.1. Termination of contract;
  - 4.4.7.2. Monetary penalty;
  - 4.4.7.3. Black listing;
  - 4.4.7.4. Contract scope reduction.

#### **4.5 Skills development for Ithala employees and appointment of HDI's to senior management positions**

- 4.5.1. Ithala's objective is to have 60 % of PPGs represented at senior management level by 2006. To ensure effective implementation of Ithala's objectives, it is imperative that the target of 60% be achieved. This is in respect of each business unit and not for the corporation as a whole.
- 4.5.2. A talent pool will be identified and fast tracked to senior management. High quality operational exposure is necessary in this regard.
- 4.5.3. A higher level of inclusiveness and advancement of women will be ensured within a period of two years, aiming to peak at 30% by 2006.
- 4.5.4. Achievements and setbacks must be published and explained on a quarterly basis to measure the success or failure of this focus area.

- 4.5.5. There will be penalties where evidence of token appointments surfaces. These may be in the form of forfeiture of an incentive bonus and/or demotion depending on findings of a disciplinary inquiry. If targets are achieved as agreed with the relevant superior, applicable incentives will be awarded, for instance, BEE Manager of the Year title.
- 4.5.6. Although not limited, skills development will be addressed in the following manner:-
  - 4.5.6.1. Through standing consultative arrangements with statutory bodies, e.g. SETAs, Ithala will formulate a skills development strategy that includes a skills audit and mentorship programmes by a Skills Development Committee.
  - 4.5.6.2. By interfacing with education authorities and the provision of bursaries for our employees.
  - 4.5.6.3. By implementing career paths to provide opportunities to HDI employees in their chosen careers.

#### **4.6. Restructuring of Ithala's own assets**

- 4.6.1. The promotion of broad-based economic empowerment is one of the key objectives of government's policy on restructuring state-owned enterprises and we believe that where possible, we will be in a position whereby we can facilitate this process.

### **5. STRATEGIC INTERVENTION PRINCIPLES**

- 5.1. This BEE policy will be the framework to the existing procurement policy.
- 5.2. Despite the high priority and focus on BEE, all transactions should still be ethical and procedurally correct in terms of the relevant policies and procedures.
- 5.3. A BEE Council will develop a list of suppliers from historically disadvantaged communities by category to be revised annually.

- 5.4. Such suppliers may be allocated contracts on a roster basis without going to public tender, that is, on tenders below R 150 000.
- 5.5. Tenders will not be restricted to those on the list should Ithala go public, as any other supplier may respond to the tenders.
- 5.6. Access to Ithala's procurement activities for businesses from historically disadvantaged communities and SMME's will be facilitated.
- 5.7. A policy of giving recognition to large businesses that support businesses from historically disadvantaged communities and implement acceptable policies.
- 5.8. Assistance to potential black economic empowerment suppliers to Ithala in creating and expanding their capacity to supply.
- 5.9. In pursuit of creating opportunities for businesses from historically disadvantaged communities, Ithala will consider paying price premiums within specified parameters to qualified suppliers.
- 5.10. Payment terms may be structured in such a way that they address the cash flow shortcomings of companies concerned.

## **6. ITHALA'S POLICY CONTROL MEASURES**

- 6.1 Appropriate control measures are a pre-requisite for the successful implementation of Ithala's BEE policy, and include, inter alia, the following:
  - 6.1.1. A transaction trail (full transparency) of procurement behaviours will be kept for Internal Audit to appraise and report on the extent of compliance with the BEE policy.
  - 6.1.2. Each of Ithala's business units will be responsible for implementing and driving the process by monitoring and reporting performance in terms of existing measuring systems, such as the balanced scorecard approach.
  - 6.1.3. The Compliance Officer, BEE Council and Internal Audit shall monitor the performance of BEE in business units and also report on the extent of adherence to policies and procedures on all transactions.
  - 6.1.4. The CEO will ultimately be responsible to monitor the progress made by business units or divisions in this regard. The CEO will

also set specific targets for subordinates against which they will be measured.

- 6.1.5. In giving effect to sound governance practices, any employee who has an interest, whether direct or indirect in any tender related matter, shall declare his or her interest in the matter. In such an event, the employee must recuse himself or herself from proceedings where the tender is to be discussed and shall not participate in any voting connected with that tender. For purpose of clarity, an indirect interest includes, but is not limited to an interest held by any employees spouse, child, parent or sibling.