

# Promoting construction-industry transformation through partnerships – press briefing on construction industry Settlement Agreement, 13 February 2017

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On 11 October 2016, Government and seven companies in the construction industry signed an agreement to promote transformation in the sector and settle outstanding and potential civil claims between the parties relating to a number of infrastructure projects. The civil claims relate to the infrastructure projects in the period to 2010, that were settled as part of the Fast-Track Settlement process with the Competition Commission.

The Settlement Agreement, also known as the Voluntary Rebuilding Programme (VRP), has three components:

- Financial contributions by the companies of R1,5 billion for developmental projects (in addition to the R1,4 billion in competition penalties previously imposed by the Competition Tribunal);
- Commitments to promote transformation and black South African ownership and participation in the sector, through either equity transactions or by partnering with and developing smaller, black-owned construction companies that will result in black-owned companies with a market value of roughly R5 billion in 2024; and
- Integrity commitments by the company CEOs to take all steps to avoid collusion and corruption in their dealings with the state, their competitors and their customers and to partner with Government in exposing all forms of corruption and tender irregularities.

Following the Settlement Agreement, a number of steps have been taken to give effect to the key principles and undertakings.

At a press conference today, Government and the seven companies provided details of actions to date.

### **Payment of R1,5 billion**

The companies have paid their first tranche of R117 million in terms of the Settlement Agreement to the National Revenue Fund. The next payment is due in July 2017.

These monies will be appropriated each year to a Trust, to be called the Tirisano Fund, to support:

- Bursaries for black students studying engineering, quantity surveying and building science;
- Bursaries for the development of black artisans including through mentorship and employment placements;
- Maths and science education in public schools;
- Special social development projects such as rural bridges, student accommodation, clinics, schools and sports-fields.
- Building capacity in the state on engineering, project management and other infrastructure services in the design, construction, operation and maintenance of public infrastructure; and
- Enterprise development programs for small, black-owned construction firms, including through the provision of working capital at concessional rates and support on performance bonds.

As an example of what could be done rapidly to achieve results, WBHO recently identified 8 top black students at the University of Pretoria, studying Engineering who were unable to receive their results because of non-payment of fees, ranging from R3 000 to R51 000. The company paid the sum of R207 000 to enable the students to complete their studies. A further example was the temporary accommodation built at Bray School in the North West for students. While permanent accommodation still needs to be constructed, temporary accommodation using Innovative Building Technologies (IBTs) are being erected together with a 1.8m high security fence.

Projects selected through the Tirisano Fund, will be announced during the course of 2017.

## **Transformation**

In respect of transformation, the companies have engaged potential partners over the past four months and in a number of cases, agreements have been reached. The seven construction companies are expected to finalise their partnership arrangements before the end of the current quarter. The partnership transformation targets are expected to be achieved within seven years and provision is made for short extensions of time on good cause.

Two of the companies have opted to sell equity to black South Africans:

- Murray & Roberts, a major construction and infrastructure company, sold 100% of its construction and civil engineering business to a black-owned consortium led by the Southern Palace Group. Murray & Roberts will remain in other infrastructure sectors such as oil and gas, metals and minerals and the power and water sectors.
- Aveng is selling 51% of their equity (and 45% of economic interest) in Aveng Grinaker-LTA to black investors and black-owned construction companies, and has already concluded an agreement with a black women-owned entity, Kutana Construction in this regard. Discussions are still in progress with additional, emerging construction companies to be brought into the transaction.

Three of the companies are in discussion or have concluded agreements with emerging construction partner-companies to increase the turnover of such black-owned companies within seven years as follows:

- WBHO have identified three partner companies, namely Fikile Construction, Motheo Construction (black women-owned) and Edwin Construction, who together will be supported to collectively reach 25% of the WBHO construction and civil engineering turnover. The three emerging partner contractors will, in turn, also support a further ten (10) emerging companies;
- Stefanutti Stocks has identified two emerging companies, namely TN Molefe Construction and Axsys Projects, as their preferred partners to be supported to reach 25% of Stefanutti Stocks' turnover;

- Raubex is currently engaged with emerging construction companies and will make an announcement on conclusion of their discussions.

Two companies are evaluating the appropriate measures to take, consistent with the agreement, and will advise Government within the next month of their plans. They are:

- Group 5 and
- Basil Read.

Should all the targets be reached in the Settlement Agreement within the seven year period, it would result in a very significant presence by black South Africans in the construction industry. More than 40 black-owned companies or investment vehicles will directly benefit from the transformation commitments.

Based on current turnover and profit levels in the sector, it is projected that by the end of seven years, black firms and black equity owners participating in the Settlement Agreement, would:

- **Have a combined turnover of between R21bn and R27bn annually** (and over the seven years as a whole through the phased-in arrangements, have a cumulative turnover estimated to range between **R104bn to R123bn**);
- **Generate profits of between R600m and R770m annually** (and cumulatively over seven years, profits totalling between **R3bn and R3.6bn**); and
- **Create company value** estimated to be **worth between R4.3bn and R5.4bn**.

To achieve these targets, the industry will need to maintain or improve on its current growth and the established and emerging companies will work in partnership with Government to strengthen the industry, improve rollout of infrastructure by the public sector and seek to expand the footprint of South African construction companies elsewhere on the African continent.

### **Integrity Commitments**

The Integrity Commitment provides that each CEO takes all steps in their powers to ensure that the company and its employees:

- conduct business in South Africa, in accordance with sound legal and ethical practice
- are not involved in any kind of bribery, corruption, collusion or unfair means of furthering their business interests
- instil a culture of integrity, honesty and transparency
- promote codes of conduct imposing ethical and legal standards on all personnel that are aligned with international best practice for the construction industry and impose appropriate penalties on those who do not comply, and
- expose, confront, eradicate and prevent collusion and corruption in the construction industry and in their dealings with public entities, private sector institutions and with each other.

### **Next steps**

An Industry Sector Summit will be convened within the next four months to draw a wider group of companies into the sector partnership and to promote wider transformation and growth in the sector.

The Settlement Agreement also provides for regular engagement between construction companies and Cabinet members responsible for infrastructure matters. A meeting of this forum has been held in January 2017 and further sessions are planned over the next four months.

Parliament will be requested to effect an appropriation of the first tranche of monies into the Tirisano Fund, which will be administered by an entity nominated by the National Treasury.

This Settlement Agreement is a ground breaking model of effective and massive transformation. The transformation targets set out above covers only the efforts of the seven companies and taken together with other steps by Government to promote transformation, the industry is expected to see far-ranging changes in ownership, control and management that will bring black South Africans into the mainstream of construction and civil engineering over the next half decade.

Speaking at the press conference today, Cabinet members and company Chief Executive Officers (CEOs) and Chairpersons welcomed the progress made with the Settlement Agreement.

“I believe that the commencement of the implementation of this agreement marks a momentous milestone and heralds a solid partnership between the South African Government and participating companies, to ensure meaningful participation and accelerated growth of black industrialists in the construction economy”, said Mr Webster Mfebe, CEO of the South African Federation of Civil Engineering Contractors (SAFCEC).

“Government can be assured that in future years, trillions of rands of infrastructure spend will be placed largely in the hands of South African companies owned by black people. From a transformation point of view, the Construction Industry has changed and will never be the same again. However, it will continue to provide quality infrastructure at the lowest cost in Africa, if not the world. South Africa will continue to be blessed with one of the finest construction industries, internationally,” Mr Mike Wylie, Chairman of WBHO on behalf of industry, said today.

“We look forward to a partnership that will provide radical economic transformation in the sector. This is the first sector to undertake an ambitious change in equity and management and more should be done in other sectors. This can be a boost for growth and the expansion of companies into the rest of the continent,” said Mr Gugile Nkwinti, Minister of Rural Development and Land Reform said today, on behalf of government. Minister Nkwinti also serves as the Chairperson of the Management Committee (MANCO) of the Presidential Infrastructure Coordinating Commission (PICC).

Statement ends.

**Note to editors:**

In October 2013, following the settlement of collusion investigations by the competition authorities, SAFCEC, the seven listed Construction Companies and the State met to find a way to:

- restore the relationship and build trust with Government,
- to make the Industry more inclusive of black people, and
- ensure SA's very competitive and effective Construction Industry is not damaged but is kept intact as it transforms in a substantial and meaningful way.

In October 2016, following three years of discussion on transformation as well as measures to address potential and outstanding civil claims, a Settlement Agreement was reached between the parties. During the course of the discussions, consultations were held with a number of other stakeholders, including the Black Business Council in the Build Environment (BBCBE) and regulators.

There are **3** key elements to the Settlement Agreement and the first was the signing of the integrity compact by each of the CEOs on 11 October 2016.

In addition to the **R1.4 billion** paid by the Companies in fines imposed by the Competition Commission in 2013, an additional **R1.5 billion** will now be paid over to the National Revenue Fund in instalments.

**The transformation model works as follows:**

Each company has 2 options

Either

Sell more than 40% of their shareholding to black South Africans

Or

Mentor 2 to 3 black-owned emerging companies who must reach a combined turnover of at least 25% of the listed company's turnover within seven year.

A trust, called the Tirisano Trust is being formed between the government and the companies, to decide on what projects will be done each year and measure progress made quarterly.