

Keep the bus moving: SMME inclusion in the construction sector

May 2023



Challenges, lessons, and good practices from city officials

Contents

1.	Introduction.....	3
2.	“Construction mafia” or “local business forum”?	4
3.	The Delangokubona phenomenon.....	6
4.	Business forums in post-apartheid South Africa.....	8
	4.1. Distribution of economic rents.....	8
	4.2. The construction sector	8
	4.3. The 30% share	9
5.	Inclusion of SMMEs in the Construction Sector	10
	5.1. The procurement network.....	10
	5.2. Engagements with SMMEs.....	11
6.	Case Studies of city practices	13
	6.1. Nelson Mandela Bay.....	13
	6.2. Mangaung	16
	6.3. City of Johannesburg.....	18
7.	Summary of Findings.....	23
	7.1. The lack of SMME opportunities creates a high stake environment	23
	7.2. Business forums are not homogenous.....	23
	7.3. “Mafia” is not always accurate	23
	7.4. A police response alone is insufficient	23
	7.5. There is no agreed approach to SMME inclusion.....	24
	7.6. The sector is unregulated	24
	7.7. PPP is a legitimising tool of business forums.....	24
	7.8. Local procurement is vulnerable to manipulation	24
	7.9. Cities overly rely on contractors for SMME engagement.....	24
	7.10. SMME development is missing.....	25
	7.11. Social facilitation is key to SMME inclusion.....	25
	7.12. Innovative practices for SMME inclusion do exist	25
8.	Conclusion and Recommendations	26
	8.1. Recommendations.....	27

“If you work in construction in this country and you’re not prepared to work with SMMEs, you’re in the wrong space.”¹

1. Introduction

The “construction mafia” has become the subject of numerous news headlines, as disputes, disruptions, and violence on building sites across the country increasingly threaten the construction sector and urban development. Through the media, “construction mafia” has become a popularised catch-all phrase referring to practices that involve violence, extortion, or threats by organised associations of small, medium and micro-enterprises (SMMEs) in the construction industry. These associations self-identify as “local business forums”, which in popular rhetoric have become synonymous with extortion, such as demands for work or protection money. Both the private construction industry and the public urban development sector are struggling to manage this growing phenomenon, and disruptions to construction sites are affecting many different city departments and entities, such as development planning, human settlements, transport, water, and sanitation.

In 2020, research by the South African Cities Network (SACN) found that site disruptions on large-scale City projects were a major factor in the slow rate of infrastructure delivery, with many projects dragging on for much longer than intended.² These practices by “local business forums” result in huge amounts of public money and resources being wasted and threats to the lives of city officials caught in the crosshairs.³ Yet there has been little academic and empirical research into the phenomenon, apart from two reports that are discussed later in the report.⁴ Furthermore, most research has focused on the impact of these practices on the private construction sector, rather than on public development projects and how public officials plan, manage and respond to the complexities of SMME inclusion.

This paper argues that the term “mafia” does not accurately portray the nuances of SMME tensions in the construction sector nor its underlying drivers, and makes what should be an issue of economic development, a matter of crime and policing only. The “construction mafia” label conveniently shifts the blame away from a public and private sector that has neglected its developmental mandate of SMME inclusion in construction. The scarcity of opportunities in a context of extreme poverty and an unemployment crisis, coupled with the potential lucrateness of each contract, creates a high-stakes and hostile environment. No cohesive vision outlining what SMME inclusion should look like or what it should achieve exists, and City departments and project managers are left to try work it out on their own.

After examining the underlying causes for the rise in business forums and ways in which SMMEs are included in the construction sector, the report looks at the practitioner experience, through case studies of three different metropolitan municipalities (Nelson Mandela Bay, Mangaung and City of Johannesburg). The key question is: **How are city governments using different approaches to engage with business forums in order to keep development projects moving?** Through 19 in-depth interviews with city officials, the case studies explore the different challenges and approaches to the inclusion of SMMEs in the construction sector, and highlight innovative practices that are assisting cities to find ways to mitigate the challenges posed by business forums, to avoid project disruptions and “keep the bus moving”. It is hoped that other cities can learn from these case studies and be able to implement better practices in their own contexts. Ultimately, the solution lies in understanding and addressing the underlying failings of the construction sector to incorporate SMMEs in a transparent, regulated and developmental manner.

¹ Interview with city official J4, 3 March 2023.

² SACN. 2020. Built Environment Integration Practice. Johannesburg: SACN.

³ Cruywagen, V. 2023. ‘Cape Town housing project killing’, *Daily Maverick*, 17 February 2023

⁴ The two research reports are: Cawe A. 2022. ‘Delangokubona’ and the distribution of rents and opportunity: An exploration of tensions over race-based policies of redress and redistribution in South Africa. WIDER Working Paper 2022/58 and Irish-Qhobosheane J. 2022. Extortion or Transformation? The construction mafia in South Africa. Geneva, Switzerland: Global Initiative against Transnational Organized Crime.

2. “Construction mafia” or “local business forum”?

Business forums are designed to promote the use of local, black labour in infrastructure development projects in the areas within which they operate. They typically have a defined spatial jurisdiction, which is often (but not always) related to ward boundaries and may become the organisation’s namesake – for example, the Newtown Business Forum operating in Newtown, Johannesburg. These forums are mostly made up of businesses in the construction sector offering semi-skilled or unskilled labour but may also include other sectors, such as private security, cleaning and funeral services.

News reports are the source of most information about business forum practices because of the lack of academic or practice-based empirical research. As a result, the language used is often sensationalist and populist, with “construction mafia” being a common, catch-all phrase for all business forums, and being immediately credited with any disruptions on construction sites.

Mafia: a secret criminal organisation
Extortion: the act of getting something, especially money, by force, intimidation, or threats.
Protection money: money that criminals take in exchange for agreeing not to hurt people or damage property.

The term “construction mafia” is inherently pejorative, implying that extortion and demands for protection money characterise all business forums. However, treating all forums as a homogenous group ignores their different engagement and operational methods, the nuanced contexts and the legitimate failings of the construction sector in post-apartheid South Africa. Labelling business forums as a construction mafia also give them a certain credibility, suggesting that they employ organised and strategic tactics and networks, whereas in many cases business forums are opportunist, short-term and ad hoc, as the case studies will demonstrate below.

Figure 1: Spectrum of engagement tactics



Source: Informed by interviews with city officials

What the public understands to be the “construction mafia” are “business forums engaged in the Delangokubona approach”.⁵ *Delangokubona* is the name of the first business forum to use systemic extortion and violence in the South African construction sector. It is not interchangeable with “business forum” because not all forums use a Delangokubona approach, and not all groupings that use a Delangokubona approach are business forums – they range from ad-hoc community structures to political organisations, such as groups within uMkhonto weSizwe (the former armed wing of the ANC). In reality, business forums use a spectrum of engagement tactics, as illustrated above in Figure 1, and may move across the spectrum, occupying the “grey space between legitimacy, legality and criminality”.⁶

For the purpose of this report, “local business forum” (or “business forum” or “forum”) is used to describe the groupings of emerging of small local businesses, primarily located in urban township areas and known as SMMEs or exempt micro enterprises (EMEs). “Construction mafia” is only used when paraphrasing from another source. To explore a more nuanced understanding of the many different ways in which business forums work requires a departure point that does not assume all forums are engaged in criminal practices. Instead, “Delangokubona” is used to describe business forums that engage in practices that include extortion or violence.⁷

⁵ Cawe A. 2022. ‘Delangokubona’ and the distribution of rents and opportunity: An exploration of tensions over race-based policies of redress and redistribution in South Africa. WIDER Working Paper 2022/58, page 13.

⁶ Interview with city official J2, 2 March 2023.

⁷ Borrowing from Cawe (2022).

3. The Delangokubona phenomenon

A report published by the Global Initiative against Transnational Organized Crime (GI-TOC) paints the national picture of the “construction mafia” phenomenon of business forums, which disrupt sites under the auspices of black economic empowerment, to demand employment for their members through subcontracts or a share of the project’s value in cash. The report focuses on understanding the criminality of the practices, and what kind of response is needed to combat this criminal behaviour.

Dubbed the ‘construction mafia’ in the media, these people have organized themselves into groups known as ‘local business forums’ and invaded construction sites across the country, demanding money or a stake in development projects in what can arguably be described as systemic extortion. These activities have been fuelled by the weak response from the state, allowing them to expand their activities. In 2019, at least 183 infrastructure and construction projects worth more than R63 billion had been affected by these disruptions across the country. Since then, invasions have continued at construction sites across South Africa.⁸

The Delangokubona approach is thought to have originated in KwaZulu-Natal (KZN), a province that has suffered the most from violence and extortion by business forums in its construction industry. Two groups based in the townships of Umlazi and KwaMashu in KZN are credited with the rise of the “construction mafia” from around 2014 to 2015 – the Delangokubona Business Forum and the KwaMashu Youth in Action Movement.⁹ In 2016, the two groups merged to form the Federation for Radical Economic Transformation (FFRET). In the same year, “heavily armed” groups linked to the Delangokubona Business Forum began invading sites across KZN, using violent intimidation to demand a percentage of the contract value or the formal contracting of their members. In 2020, as part of a transition to distance itself from “mafia” tactics and after ongoing negotiations with leaders in the construction sector, the FFRET rebranded itself as the Black Business Federation (BBF), claiming to have left its Delangokubona tactics behind.

From around 2018, Delangokubona tactics spread from KZN across the country and are today present in every metro across South Africa. Yet interviews with City practitioners suggest that powerful, highly organised, and overtly violent tactics are not the norm for most business forums across South Africa. The way in which business forums operate in other cities and between wards can differ quite dramatically, as shown through the case studies (see Section 6). The interviews corroborate the GI-TOC report’s claim that violence and extortion used by business forums reached a peak in about 2018. However, the interviews also suggest that SMME challenges had been present in some cities as early as 2011, with business forums operating long before the increase in violence by the KZN forums. According to officials, until around 2015, business forums had their challenges but were easier to work with overall but became more radicalised and targeted in their approaches between 2015 to 2018.

By 2019, the South African Forum of Civil Engineering Contractors (SAFCEC) reported that business forums had disrupted “at least 183 infrastructure and construction projects worth more than R63 billion”, and in January 2020 these disruptions cost the national economy R40.7-billion.¹⁰ The impact in KZN has been much worse: “between 2016 and 2019, almost all construction sites within the province had been affected by invasions linked to local business forums”.¹¹ The Delangokubona tactics used by certain business forums have not only resulted in site disruptions and delays but also led to the demise of local SMMEs that were unable to compete with the business forums. Although larger construction companies may bear the brunt of these disruptions, they are better equipped to take on the illegal practices of business forums and have better bargaining power and resources at their disposal.

⁸ Irish-Qhobosheane J. 2022. Extortion or Transformation? The construction mafia in South Africa. Geneva, Switzerland: Global Initiative against Transnational Organized Crime, page 2.

⁹ Ibid: 2

¹⁰ Ibid: 31.

¹¹ Ibid: 1.

The state's weak response has created an enabling environment for business forums that adopt a Delangokubona approach to flourish and "expand their activities".¹² Government has strongly condemned the illegal practices of business forums, including President Ramaphosa in his 2020 State of the Nation Address, but the State has not taken any significant action.¹³ The weak policing response in enforcing the many interdicts brought against certain business forums has left criminal elements within the forums with a sense of impunity. Furthermore, in certain cases specifically in KZN, ties to politicians give business forums protection to continue using criminal tactics, such as the alleged connections to former eThekweni mayor Zandile Gumede.¹⁴

¹² Ibid: 1.

¹³ President Cyril Ramaphosa. 2020. State of the Nation Address, 13 February, 2020, Available at <https://www.gov.za/speeches/president-cyril-ramaphosa-2020-state-nationaddress-13-feb-2020-0000>.

¹⁴ Irish-Qhobosheane J. 2022. Extortion or Transformation? The construction mafia in South Africa. Geneva, Switzerland: Global Initiative against Transnational Organized Crime, page 19.

4. Business forums in post-apartheid South Africa

4.1. Distribution of economic rents

Cawe's 2022 paper, mentioned above, is one of the few empirical research papers that manages to contextualise the nature of business forums within a political economy framing of post-apartheid South Africa. It is commonly understood (and even suggested in news reports) that business forums exist because of a general context of unemployment, inequality, and mainstream economic exclusion due to a history of apartheid. However, Cawe takes this idea much further, viewing business forums as an example of a mechanism for redistributing economic rents along racial lines.

Technically speaking, an economic rent is the surplus remaining once capital and labour have been paid a market price. With perfect competition that surplus would not exist. But rents can be artificially elevated if firms win contracts at beneficial prices, form cartels to stitch up consumers or lobby governments for favourable rules.¹⁵

For Cawe, the redistributive potential of rents is an important contribution to developmental outcomes, especially in transitional societies needing to undertake a process of economic redress. In the case of South Africa, the country's economic policy is aimed at the redistribution and redress of past injustices, based on the system of affirmative action, as enshrined in the Broad-Based Black Economic Empowerment (B-BBEE) Act No. 53 of 2003.

[T]he democratic breakthrough in 1994 was in many ways about disturbing the historic [apartheid and colonial] rent extraction system and replacing it with new rents aimed at redress and redistribution. B-BBEE, in this sense, is about the distribution of economic rents to the erstwhile marginalized and excluded, as a corrective or remedial measure. [The B-BBEE Act recognises] that the South African economy performs below its potential because of the persistence of the reality that 'still excludes the vast majority of [citizens] from ownership of productive assets and [possession] of advanced skills'.¹⁶

Business forums define themselves in relation to this policy of race-based redistribution and in so doing legitimise their very existence by mobilising the "theory, language and policy tools of BEE".¹⁷ They see themselves not only as an extension of this policy, but also as holding the mainstream economy to account for committing to redistribution and economic justice. The reality is that the formal processes of economic redistribution and redress have not brought about the intended economic transformation, resulting in a "post-apartheid 'politics of entry' that mobilizes both formal and informal adaptations of policy" to combat the high barriers to entry into the mainstream economy.¹⁸

4.2. The construction sector

In practice, the mainstream mechanisms of B-BBEE have not been able to shift the monopoly of a few white-owned and -managed companies, especially in the construction sector. For example, in the civil work sector, the top five companies hold a combined market share of 76.6%.¹⁹ In such a context, more informal, negotiated or Delangokubona approaches are adopted to shift distribution in favour of new entrants previously excluded from the sector – the Delangokubona approach can be seen as "the 'informal' and at times violent adaptation of [rent distribution] policy".²⁰

Fundamental to understanding the current SMME dynamics in the construction sector is understanding the role that the construction sector is meant to play in economic development. The construction sector has been positioned as a mechanism through which to lift people out of poverty:

¹⁵ The Economist. 2022. "The Makers and the Takers": Rent-Seeking Capitalists Have Been Raking It In Over the Past Decades. The Economist, 12 March. As cited in Cawe (2022: 5).

¹⁶ Ibid: 7.

¹⁷ Ibid: 2.

¹⁸ Ibid: 21.

¹⁹ Ibid: 8.

²⁰ Ibid: 1.

“government saw construction as a way to get people busy”.²¹ The sector relies on low-skilled and semi-skilled labour and thus was deliberately positioned as an industry through which SMMEs could access formal economic opportunities, with few barriers to entry in terms of business registration and compliance. The Construction Industry Development Board (CIDB) is the entity responsible for the registration of all contractors tendering for construction projects in the public sector as well as the categorisation of contractors from grades 1 to 9, according to financial and work capability. Contractors only need to meet financial and track record criteria for grades 2 to 9, but for grade 1 there is no qualifying criteria, allowing anyone to register themselves as a contractor.

4.3. The 30% share

South Africa’s Preferential Procurement Policy (PPP) Framework Act No. 5 of 2000 is intended to promote black economic empowerment and designed to institutionalise the inclusion of historically disadvantaged individuals and SMMEs in public-sector procurement.²² The 2017 Preferential Procurement Policy Regulations serve as a “legitimising regulatory and policy mechanism [...] in the face of incontrovertible inequality and limited opportunity for local small and medium-sized enterprises (SMEs) to access opportunities in multi-million-rand contracts”.²³ For *public* infrastructure projects valued at over R30-million, cities are required to allocate 30% of the project’s scope of work to “local content”, as a subcontract to the main contractor.²⁴ However, many SMMEs interpret the policy as applying both to public-sector and private-sector projects, as well as smaller projects.

In many urban areas, a city-led development project, such as a new clinic or community centre, might be the first development that an area has seen in decades. And with each new development, comes the promise of jobs: “in these areas, if there’s no city development, there’s no work”.²⁵ For many in the community, these jobs are often more valuable than the development itself. When a development comes to an under-developed area, it is common practice for individuals to register themselves as companies (even if they do not have any construction skills and experience) in the hope of getting awarded a subcontract. In some areas, up to 200 registered SMMEs may be competing for a handful of actual subcontracting opportunities. This scarcity of opportunities, coupled with the potential lucrateness of each individual subcontract, creates a high-stakes, unregulated environment that is vulnerable to manipulation and in need of an organising structure.

Business forums see their role as that of an organising structure for their ward, representing the interests of SMMEs for the awarding of the 30%. However, these forums may also be responsible for manipulating the procurement process, and it is not uncommon for certain business forums to demand a percentage of the total project value in cash as a “protection fee”. Other forums demand that 30% of the project’s work be contracted to their members, even if the subcontracting process has already taken place and contracts awarded to other local SMMEs. The reality is that too many SMMEs are vying for a very limited number of subcontracting opportunities within an unregulated sector, resulting in the manipulation of the SMME inclusion process.

In January 2023, new PPP Regulations replaced the 2017 Regulations, which were found to be unconstitutional in terms of the Framework Act of 2000. The major amendment to the new Regulations is around giving organs of state control over determining the “pre-qualification criteria” of tenders.²⁶ More importantly for SMMEs, the new Regulations have removed Regulation 9 which specifies subcontracting as a condition of tender for contracts above R30-million. However, the implication of this amendment in terms of subcontracting is yet to be seen and undoing the perceptions of entitlement to the 30% by SMMEs is unlikely as it has become an entrenched expectation by communities.

²¹ Interview with city official J4, 3 March 2023.

²² National Treasury. 2000. Preferential Procurement Policy Framework Act, Act No 5 of 2000.

²³ Cawe (2022: 2).

²⁴ National Treasury. 2017. Preferential Procurement Policy Framework Act 2000: Preferential Procurement Regulations, Published in the Government Gazette, 20 January 2017, No 40553.

²⁵ Interview with city official J4, 3 March 2023.

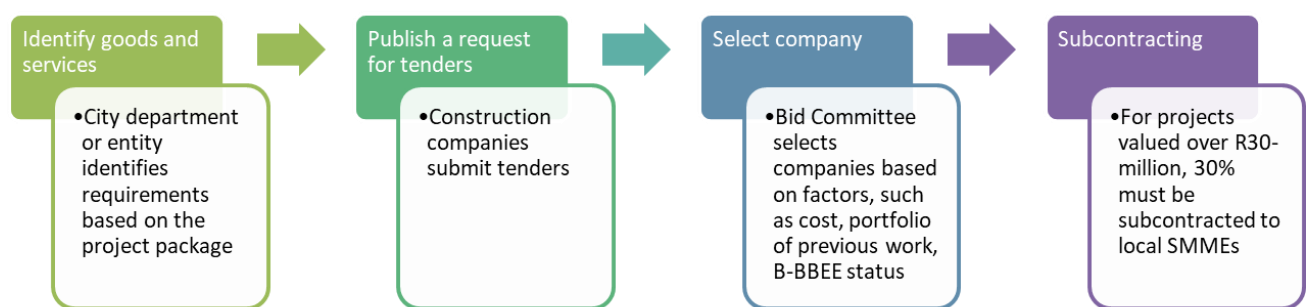
²⁶ National Treasury. 2022. Preferential Procurement Policy Framework Act 2000: Preferential Procurement Regulations, Published in the Government Gazette, 4 November 2022, No 2721.

5. Inclusion of SMMEs in the Construction Sector

5.1. The procurement network

The Service Delivery Budget Implementation Plan (SDBIP) determines the service delivery and infrastructure projects that the municipality will implement annually, along with the associated budgets.²⁷ The annual SDBIPs are based on the five-year Integrated Development Plan (IDP), which is a comprehensive development plan for the city outlining local developmental priorities as articulated through community consultation.²⁸ The city's job is to ensure the implementation of the SDBIP, by allocating infrastructure projects to the appropriate department or entity. Project managers in the relevant city departments or entities then prepare the project package (from idea to implementation plan), after which a procurement process takes place, and a company is selected (Figure 2).

Figure 2: Procurement process



Source: Informed by interviews with city officials

As mentioned above, for projects valued at over R30-million, National Treasury's 2017 PPP Regulations required 30% of the project's value to be subcontracted to local SMMEs.²⁹ It is the role of the main contractor to do all subcontracting, including of SMMEs as required by the PPP. This creates a tripartite relationship that Cawe refers to as the "procurement network"³⁰, between the city (the procuring entity), the main contractor and the SMME subcontractor, and includes other key players interfacing with the network (Figure 3).

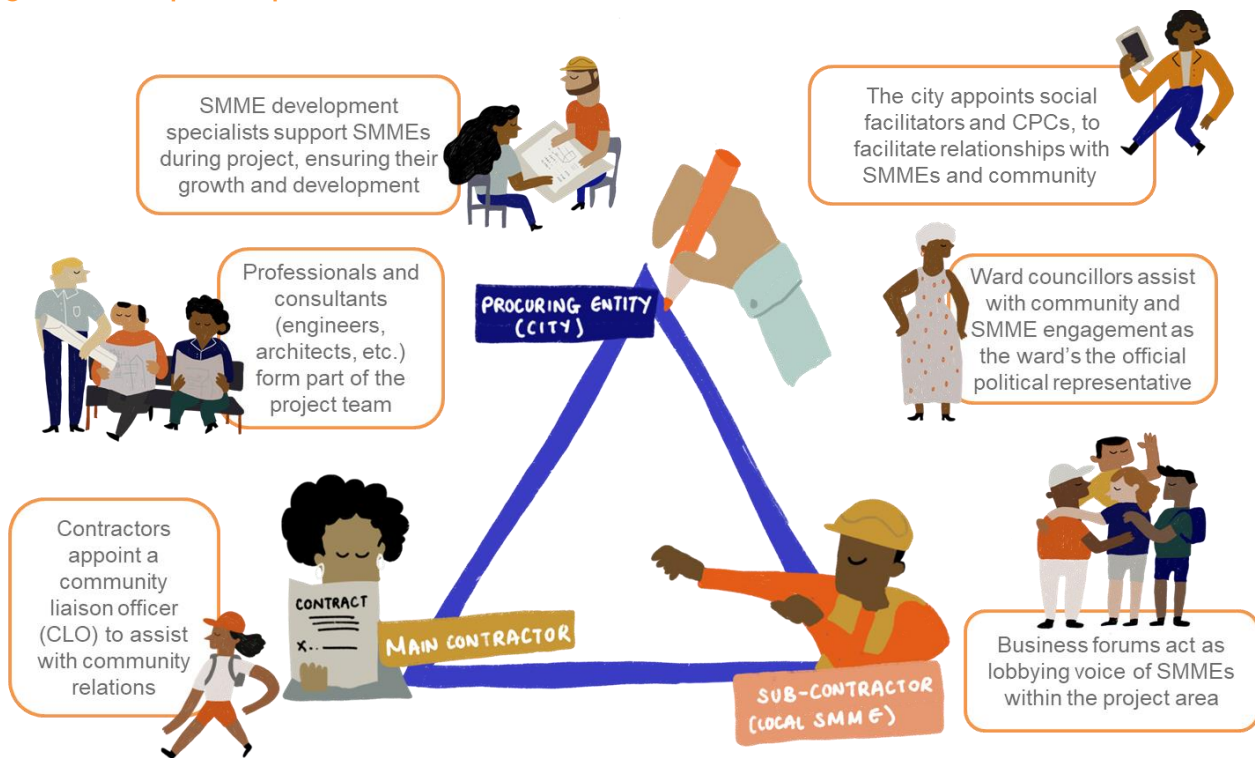
²⁷ SACN. 2021. Rules of the Game. Johannesburg: SACN.

²⁸ Ibid.

²⁹ National Treasury. 2017. Preferential Procurement Policy Framework Act 2000: Preferential Procurement Regulations, Published in the Government Gazette, 20 January 2017, No 40553.

³⁰ Cawe (2022: 14).

Figure 3: Example of a procurement network



Source: *Informed by Cawe (2022: 14).*

As Figure 3 illustrates, the relationship between cities and SMMEs needs to be seen in context of a more complex arrangement involving not only the three primary actors but also various other actors who interface with the network.

5.2. Engagements with SMMEs

The nature and intricacies of the procurement network differ between projects, departments, and cities, in particular the city's level of involvement and engagements with SMMEs. Cities do not have a common approach to dealing with SMMEs. To convey the fluidity and messiness of these engagements, a spectrum is used to describe the different methods, ranging from **reactive/hands-off** to **proactive/participatory** (Figure 4).

Figure 4: Spectrum of SMME engagement methods



Source: *Informed by interviews with city officials*

Business-as-usual approach

This approach refers to the city relying on the main contractor to manage the relationship with SMMEs (such as the portioning of work packages, bidding, and tender allocation processes). It is a standard, common approach, as the contractor is legally responsible for the subcontracting process. However, managing the subcontracting process is complex and requires time and dedication, as well as sensitivity when engaging with communities. Contractors are understandably more concerned with

making a profit and are “not in the business of SMME development”.³¹ As a consequence of this hands-off, unsupervised approach, an unregulated laissez-faire environment is created for SMMEs leading to challenges later in the project that the city must respond reactively to. Examples of reactive responses by cities and contractors include interdicts, additional security, accommodating extortion, negotiations, and social compacting.³²

Interdicts: “Between 2016 and 2019, more than 51 court interdicts were granted against businesses forums and their members” by private construction companies and city departments or entities.³³ However, business forums have found ways to navigate these interdicts and continue illegal tactics, such as using forum members not mentioned in the interdict to take over the activity, or simply ignoring the order.

Additional security: Certain construction sites introduce additional private security because of the real and perceived inability of the police to enforce interdicts and suppress the violent tactics used by certain business forums. However, this has limited effect and can increase the propensity for violence on site: “we can’t outgun the forums. Where do you stop, by creating your own private armies to protect against the threat?”.³⁴ The added expense of additional security is also a limiting factor.

Accommodating extortion: A common response is not to confront the violence or threats but rather accommodate the business forums by conceding to their demands. For main contractors, the easiest and quickest way forward is often to pay the protection money or employ the business forum’s choice of subcontractor, rather than face site disruption or physical violence: “Eventually, the amounts businesses are paying forums become a line item in their budgets”.³⁵ Although accommodating extortion as part of the cost of doing business may reduce violence on sites, it is not sustainable in the long run. Such an approach both legitimises and entrenches extortive practices and emboldens business forums to continue increasing their demands.

Negotiations: Disruptions to site often occur once the construction process has begun, and the subcontracted SMMEs have been procured and started work. The negotiations then must find a way forward that involves appeasing business forums without re-subcontracting new SMMEs. However, such negotiations are about mitigating further financial losses rather than finding a sustainable mutually beneficial framework of engagement. Negotiations with business forums can also happen at a high level between leaders in the construction sector and the business forum, whereby an agreement is reached to ensure construction sites can continue undisturbed. For example, in 2017 the SAFCEC began engaging with the FFRET and eventually reached an agreement to work together, although there have been mixed reports around its success.³⁶

Inclusive social compacting approach

At the other end of the spectrum is a hands-on, participatory approach, that city entities use to consult proactively to include SMMEs in construction projects. This requires building consensus and trust through a transparent and rigorous process of engagement that begins long before the construction phase of the project. Unlike in the business-as-usual approach, the main contractor is not relied upon here as the interface between the city and SMMEs. Development entities, such as the Mandela Bay Development Agency (MBDA) in Nelson Mandela Bay and the Johannesburg Development Agency (JDA) in Johannesburg, are particularly hands-on in their approach to SMME engagement, which has proven to have a hugely positive impact on the inclusion and development of SMMEs. This approach is time-heavy and requires expert social facilitators to guide the engagement process, which is invariably sensitive and prone to tension. The following case studies highlight practices that form part of this participatory approach.

³¹ Interviews with city officials.

³² Irish-Qhobosheane (2022).

³³ Ibid: 23.

³⁴ Ibid: 23.

³⁵ Ibid: 24.

³⁶ Irish-Qhobosheane (2022).

6. Case Studies of city practices

As part of the research, in-depth one-on-one interviews were conducted with 19 officials from three cities: Nelson Mandela Bay, Mangaung and Johannesburg. These cities were selected through an SACN engagement process prior to the research inception, as they showed interest in being part of this study. The three cities represent a balanced sample of South Africa's metros in terms of size, geographic location, and population demographics. Prior research on business forums has focused on eThekweni as the centre of construction site violence, and a lacuna has existed on other cities' experiences.

Represented by the 19 practitioners, are several different city entities and sector departments, all of which interface with SMMEs on a regular basis – such the development agencies and the departments of human settlements, water and sanitation and strategic planning. These practitioners are at the coalface of project implementation, involved in community consultation or have a high-level view of how this issue is affecting city practice. These interviews inform the case study findings, which cover the following:

- SMME challenges: the structure of business forums and the nature of their activities and tactics, as well as the reactive measures by cities
- The SMME inclusion process: cities' methods of SMME engagement outlining where projects fall on the “spectrum of engagement methods” (Figure 4) and mapping the “procurement network” (Figure 3)

6.1. Nelson Mandela Bay

In Nelson Mandela Bay, seven interviews were held with officials from both the municipality (human settlements, water and sanitation, and strategic planning) and the MBDA, which is the entity responsible for implementing the city's development projects.

SMME challenges

In Nelson Mandela Bay, business forums seem to be strong and localised. Some forums span multiple wards, others claim to represent a single ward or a certain interest group within a ward, while others have links to and operate within the same territories of existing gangs. Business forums are “powerful individuals claiming to represent the broader community, disrupting the procurement process”³⁷, rather than a stable, organised structure. They are constantly being contested, rearranging themselves and splintering into smaller groups in order to adjust to a unstable and changing political environment. In certain wards, councillors are very powerful and diffuse tensions with SMMEs, while in other wards, councillors have alliances with the dominant forums.

In 2017–2018, there was a rise in SMME-related issues, including intimidation and invasion of construction sites and government offices, but no direct violence was aimed at officials or contractors. A possible reason for this increase in tensions is that the municipality has been slow to implement the PPP's 30% regulation.

The main tactics employed by business forums include:

- Manipulation of the subcontracting process, such as the “selling” of subcontracts, where the successful SMME does not complete the work but sells it to another SMME.
- Disappearance of SMMEs after “preliminary and general costs” have been paid – these are upfront payments made to the subcontractor to cover initial costs, such as buying certain tools, fencing sites, etc.

³⁷ Interview with city official N1, 10 March 2023.

- Misinterpretation of the PPP, with SMMEs demanding 30% even on small, short-term projects and an attitude of “if you want to work here, we need our percentage”.³⁸
- Demands from SMMEs to be paid without doing the work – contractors often give in because they see paying as the easiest way forward.

The municipality has never issued an interdict against SMMEs or business forums in response to threats and intimidation. This is due to political instability and coalition politics, which make taking decisions on contentious issues difficult. The result of “so much political and administrative in-fighting” is no direction from leaders and project managers who feel that they are left on their own.³⁹ As a last resort, when tensions get too high for a project to progress, the municipality will move the project to another area. The municipality has in place contingency projects to ensure that the capital budget is used because unspent capital budgets means losing money, especially for a grant-dependent metro, such as Nelson Mandela Bay: “a project delayed is money lost to the metro, and we can’t afford that”.⁴⁰

As a consequence of these tactics used by business forums, officials worry that SMMEs are not developing their construction skills or growing their businesses, as they are more concerned with short-term financial wins than long-term business development. Officials reflect that “SMMEs need to progress [...] they can’t be a [CIDB] Grade 1 company all these years”.⁴¹

The SMME inclusion process

Between 2018 and 2021, the municipality’s Economic Development Department initiated an innovative and previously untested approach to formalising the city’s business forums. The business forum(s) in each ward were amalgamated into a centralised Local Business Committee (LBC). The LBC brought together around 60 different forums that were organised into six geographic clusters and elected an executive leadership comprising representatives from the forums. A database was created to manage SMMEs according to different sectors and disciplines and store their compliance documentation. A consultant company was hired to facilitate the amalgamation process, manage the database and act as an ongoing facilitator between the city and LBC.

The consultant together with the LBC executive acted as the city’s entry point to working with SMMEs on a project. Together, they worked out how to split the subcontracting opportunities based on the scope of work and project packages supplied by the municipality. To ensure that project opportunities were distributed fairly throughout the entire metro (which had been a previous grievance raised by under-developed communities), the subcontracting work was split across multiple wards, with 30–50% going to the project ward’s SMMEs and the rest to SMMEs from the cluster or the entire metro. The exact split was determined by the size of the project, with bigger projects allocating a larger percentage to the ward.

According to officials from the human settlements and water and sanitation departments, “this approach worked like a charm for a few years”⁴² and “was a well-oiled machine”.⁴³ However, by 2021, allegations were made about political interference in the process that was allowing the LBC to become emboldened and entitled. Stories emerged about the LBC’s executive committee and consultants going through the municipality’s capital expenditure budget and allocating 30% of all line items to be subcontracted, thereby circumventing the legal procurement process stipulated in the PPP. As a result, the LBC structure quickly fell apart, although the outcomes of the investigation have not been determined. Currently, certain departments still informally work with what remains of the LBC, but this can be risky as the LBC has become politically contested and can create tensions with certain ward

³⁸ Interview with city official N3, 13 March 2023.

³⁹ Interview with city official N2, 10 March 2023.

⁴⁰ Interview with city official N2, 10 March 2023.

⁴¹ Interview with city official N3, 13 March 2023.

⁴² Interview with city official N1, 10 March 2023.

⁴³ Interview with city official N3, 13 March 2023.

structures. Project managers are now left on their own to work out how to engage with SMMEs, and “it becomes a jungle, with each project manager doing their own things”.⁴⁴

The MBDA way

From 2013 to 2020, the MBDA implemented an internationally financed, long-term and multi-layered project called Safety and Peace through Urban Upgrading (SPUU) in Helenvale – a gang-ridden and extremely under-resourced area with the highest attempted murder rate in the country.⁴⁵ Working with business forums in Helenvale proved incredibly complex and hostile because, as the project progressed, the original forum split into six different forums representing different interests. Four of these splinter groups were aligned to gangs and the SMMEs within their territories. Between 2015 and 2018, tensions among forums and contestations of construction contracts became so hostile that the project was brought to periods of standstill. For construction to continue, serious intervention from the MBDA was needed to manage the conflicts.

In a final attempt to find consensus about a way forward, and given the divisions within the community, the MBDA convened the entire Helenvale community at a neutral venue outside of Helenvale. To bring a sense of gravitas to the meeting, the venue chosen was the Nelson Mandela Bay Stadium and key city leaders (including the City Manager and Mayor) were present. The MBDA’s strategy was to use the entire community to demonstrate to the conflicting parties the importance of the project and what was at stake should construction not commence. The MBDA had already established a Project Steering Committee comprising 13 stakeholder groups. Each group prepared an emotive statement about the importance of the SPUU that was presented at the meeting, to instil a sense of community ownership and protection over the project.

During subsequent periods of project breakdown and tension, further engagements took place at the Stadium in what became known as “**The Stadium Process**”, and construction gradually recommenced. The process was likened to a “moving bus”, as the project could continue while intense negotiations took place simultaneously on the side – “we never stop the project because we are unhappy about something, the project has to keep moving [...] we can talk, but the bus doesn’t stop”.⁴⁶

The Stadium Process taught the MBDA many lessons, which were institutionalised as part of its approach to SMME inclusion going forward. Key to this process was engaging with the entire community in a way that would protect the project from getting derailed by conflicting interest groups – “It’s difficult for them [SMMEs] to force their way in front of a whole community. Putting up all the stakeholders puts up a barrier between the hostility and the project.”⁴⁷ The Stadium Process involved several participatory engagement strategies, including:

- Electing a Project Steering Committee comprising all major interest groups, including business forums, religious institutions, schools, traders, etc.
- Through a facilitated process with the community, pre-emptively naming the potential risks (e.g., disruptions due to SMME’s contracting disputes).
- Co-creating the rules of engagement that would be applied throughout the project and committing to the engagement process, regardless of how interest groups might change.
- Taking the time to work through all contentious issues and finding consensus. Although time-consuming in the beginning, this approach proved to benefit the project later on.

Lessons learned from the Stadium Process:

- Treat everyone as equal community members with valid concerns, regardless of possible gang involvement.

⁴⁴ Interview with city official N1, 10 March 2023

⁴⁵ Mandela Bay Development Agency. 2020. Helenvale: a story of resilience and lessons for development practitioners. Gqeberha: Mandela Bay Development Agency. Page 13.

⁴⁶ Interview with city official N4, 13 March 2023.

⁴⁷ Ibid.

- Ensure the engagements are professional and respectful, to neutralise tensions. “People want to be given their dignity, even the so-called gangsters [...] treat them as people, give them that, and in a way, it neutralises their hostility”.⁴⁸
- Stick to the engagement process and do not be derailed by rising hostilities. “[The dominant SMMEs] come in and it’s war, and it works for them if you fall for it, and they back you into a corner. You have little room to manoeuvre after that.”⁴⁹
- Give agency to the business forum and the ward councillor to make decisions about appointments. The MBDA and contractor stayed out of the SMME selection, which helped to quell accusations of favouritism. This approach is potentially risky, as the dominant business forums and councillor are given a lot of power to sway the process. However, officials still feel that the community is ultimately better placed to make these decisions, and such an approach allows a level of trust and legitimacy to be established with the forums.

The MBDA’s tactics require expert soft skills and facilitation, as well as the luxury of *time*. The MBDA is seen as “being soft” by other city departments and by the contractors, and so “private sector guys get frustrated with us because of engaging with SMMEs, and think we are getting too involved”.⁵⁰ The MBDA’s SMME facilitators have become patient in the face of hostility and tension, as the attitude of SMMEs “can be aggressive”. The solution is to “let them scream and shout, [...] and we can always reschedule the meeting”. This approach of letting things play out requires a lot of time but is the price of working with SMMEs in an engaged and hands-on way. You may “feel like you’re moving backwards, but I’ve learnt to accept that. [...] It’s not costing us anything but our time, and that’s the price of what we’re trying to achieve”.⁵¹

The MBDA’s deliberate commitment to “keep talking and keep the bus moving” produces results, and “things are ultimately resolved happily or unhappily”.⁵² This way of working is unique and may not be possible for government officials who generally do not have the time, skills or resources to engage in such a hands-on way. City officials are often much more outcome-oriented, whereas the MBDA sees itself as “process-oriented”. However, for the MBDA practitioner, they feel this hands-on approach is the only way to conduct meaningful and robust community participation:

The era we are in requires a much deeper process of public participation and partnership. We need to give [the community] the key of custodianship in the beginning of the project. They need to know, “this is ours to lose”.⁵³

6.2. Mangaung

In Mangaung, three interviews were held with officials from the municipality, including human settlements and water and sanitation departments. One interview was conducted with an official from the Housing Development Agency (HDA) – the entity responsible for the implementation and construction of the city’s housing projects.

SMME challenges

In Mangaung, the structure of business forums differs greatly from the other two cities. Instead of ward-based structures, the business forums take the form of city-wide social movements. Two forums represent SMME interests at a metro scale: Mangaung Concerned Citizens (MCC) and the Mangaung Service Delivery Forum. These two forums claim to represent residents who are dissatisfied with service delivery in Mangaung and are also involved in the subcontracting of SMMEs on city infrastructure projects. In individual wards, only two or three SMMEs may be active members of these metro-based structures. Compared to other cities, Mangaung is smaller and has lower infrastructure

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Interview with city official N6, 13 March 2023.

⁵² Interview with city official N4, 13 March 2023.

⁵³ Interview with city official N6, 13 March 2023.

investment (there are simply fewer construction projects), which may explain why metro-wide forums have been able to work.

The two forums are used “to fight political battles”, mobilising SMMEs and communities as a means of climbing the political ladder, and often operate as “an official opposition” to the ruling council, although they “pretend to be non-political”.⁵⁴ Their concern with service delivery is described as “a guise”, given their political involvement that includes conducting city-wide shutdowns, presenting memorandums, commenting on budgets, sitting in council meetings, and taking credit for service delivery improvements and community investments. There are often power struggles with certain ward councillors, and in certain wards, MCC and the Mangaung Service Delivery Forum carry a lot of political weight.

The main tactics employed by the forums include:

- The mobilisation of SMMEs through a small number of ward-level representatives, once the municipality has earmarked an infrastructure project for a ward.
- Disruption of project sites (in the case of the MCC), demanding 30% of the work to be subcontracted to certain local SMMEs associated with them. Although most of these confrontations have not been overtly violent, disruptions have included threats of violence and damage to equipment. In certain cases, individuals arrive on site “in bakkies with guns”⁵⁵ as an intimidation tactic. The business forums “are careful not to assault, so it’s hard to make arrests – they make it a grey area”.⁵⁶
- In rare cases, demands for 30% of the project budget without actually doing the work.

Currently, the two forums appear to be organising themselves more locally and are far less vocal than in previous years. The forums are described as “policy-proud”⁵⁷, often carrying a physical copy of the PPP to meetings and site disruptions, as a legitimising tool. However, since the 2022 amendments to the PPP that omit the 30% subcontracting allocation, the forums appear less confident and vocal about making demands. It is not clear whether this is a direct result of the PPP amendment or a temporary period of relative calm.

The relationship between Mangaung’s two business forums and the city has generally been antagonistic, but much depends on particular instances and ward dynamics. As mentioned, the forums are careful not to engage in direct physical violence, but threats of violence and intimidation have been made. When site disruptions and hostile interactions became rife, the city interdicted and took the MCC to court. During this period, the City Manager had to get involved in broadscale negotiations with the forums. In general, contractors refuse to give into demands by the forums for cash payoffs but have been prepared to “compromise on employment”, i.e., give into procurement demands.⁵⁸

The SMME inclusion process

To pre-empt disruptions by business forums, city officials seek to create a sense of project ownership among the broader community. During community meetings, with the help of the councillor, officials engage with the community to instil the message that the project is for the community’s benefit and to “warn against people from outside” i.e., business forums.⁵⁹ In an informal settlement upgrading project in Kgatelopele, this approach was successful in getting the help of the community to stand up to interference by external business forums. Officials have found that good community engagement processes, which involve sharing as much project information as possible, contribute to the project’s smooth running down the line, especially when working with SMMEs. The process involves the following:

⁵⁴ Interview with city official M2, 27 February 2023.

⁵⁵ Interview with city official M4, 28 February 2023.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Interview with city official M2, 27 February 2023.

⁵⁹ Interview with city official M1, 27 February 2023.

- Appoint a community liaison officer (CLO) but use the ward councillor as the main go-to community representative.
- Establish a Project Steering Committee comprising city officials, the ward councillor and other community representatives, contractors, consultants, and the CLO.
- Determine the subcontracting work packages, which is done by the main contractor.
- Hold a community meeting with SMMEs, organised through the ward councillor, to advertise the work needed.
- Submit bids by the SMMEs to the main contractor.
- Evaluate the bids, which is done by the Bid Committee comprising the contractor, city representatives (e.g., the project manager) – determining the subcontractors is ultimately the contractor’s responsibility.

There have been several issues with this process, with the Bid Committee being accused of links to councillors, and the MCC arguing for the City to be more hands-on in running the process. The lack of a formal process for managing the database of SMMEs means that contractors are able to influence the procurement system informally. During the bid evaluation, contractors can veto certain SMMEs for previous substandard work but, as no process of blacklisting SMMEs is in place, this veto may also be used to reject SMMEs that contractors do not want to work with. Adding further complexity to the procurement process is the political nature of Mangaung’s business forums, which creates tension with certain ward councillors. What is needed is a formal and transparent bid evaluation process built off a well-managed database of SMMEs.

In certain departments, officials admit that they were slow to implement PPP and thus legitimised the role of Mangaung’s business forums in holding the City to account. For some officials, “SMME inclusion failed brutally” and is still poorly implemented, with multiple subcontractor procurement issues, while other officials are learning from previous mistakes and “learning to do engagement better”.⁶⁰

6.3. City of Johannesburg

In the City of Joburg, seven interviews were conducted with officials from the Johannesburg Development Agency (JDA), the development entity that manages the construction of infrastructure projects.

SMME challenges

The nature and extent of business forums differ greatly across the city, with officials having very different experiences depending on the areas in which they work. For example, in areas such as Alexandra or Orange Farm, forums have employed Delangokubona tactics, including violent demands for 30% cash payments during the Rea Veya project. In contrast, forums in the inner city mobilise mostly around disputes with contractors and rarely engage in violent tactics.

For the person responsible for SMME development at the JDA, business forums are not the problem behind all site stoppages and SMME challenges. Business forums are unstable, not clearly defined and cannot claim to represent an entire community because of the political polarities within Joburg’s wards that create division. They are not stable, organised structures but mobilise retroactively, in response to development projects and emerging interest groups.⁶¹

However, challenges with SMME inclusion remains and it’s reported that in the JDA’s 20 years of experience, not one case of a project involving SMMEs has gone smoothly.⁶² JDA officials all accept

⁶⁰ Ibid.

⁶¹ Interview with city official J4, 3 March 2023.

⁶² Interview with city official J1, 2 March 2023.

that working on development projects requires navigating a highly complex and fraught SMME landscape. Opportunities are scarce in an economic environment where “the development happening in certain wards by the City is the only development – if there’s no City development, there’s no work”.⁶³ Yet despite SMME challenges and site stoppages, projects *will* be completed but will take much longer than planned.

Challenges include the following:

- The mushrooming of SMMEs (since 2015) and a “perception from communities of wanting to play in the space of construction”, irrespective of background or experience in construction.⁶⁴ As the space became flooded and “the bus was full”, forums emerged that organised and mobilised around project opportunities, especially in economically deprived areas. For instance, 120–150 people, each representing their own company, may present at a briefing in Alexandra or Orange Farm, although a standard project requires only a few SMMEs.
- The different SMME consultation processes undertaken (sometimes simultaneously) by the multiple entities that implement infrastructure projects across the City of Joburg (such as Johannesburg Water, City Power, Johannesburg City Parks & Zoo and Johannesburg Road Agency). The lack of a uniform approach to dealing with SMMEs confuses and frustrate communities.
- Involvement of ward councillors with their own business interests in construction projects (since 2015). Before councillors in Alexandra got involved, the business forums were organised and easy to work with. Business forums tend to mobilise when the community has grievances around councillors manipulating the appointment process, while councillors and certain forums also have covert connections. All this is complicated by ward politics, where promises are made to SMMEs and expectations created, as it is politically important for a councillor to be seen to be bringing work opportunities to the ward. Like in Mangaung, councillors are involved in the procurement process in that they can veto SMMEs if they are not from that ward.
- Connections between councillors and CLOs. Councillors influence the appointment of the CLOs who are often reported to be working for the interests of the councillors. “The point of appointment is where it gets heated. This is where you will start getting pillar-to-post issues, individuals trying to destabilise the procurement process.”⁶⁵ It is often at this point that a forum will be formed in response to the power dynamics emerging and the competing interests.
- Disputes between the subcontractor and main contractor. New SMMEs may struggle to budget correctly, due to lack of experience and narrow margins, resulting in unmet expectations around profits at the end. Frustration with contractor’s rates often leads to SMMEs stopping work, at which point the JDA needs to intervene – either to talk SMMEs down from unreasonable demands, or to agree that the contractor is squeezing SMMEs unfairly.

The JDA understands that contractors do not have the “same SMME passion” because their aim is to make money from construction projects, rather than to ensure SMMEs are developing and being fairly included.⁶⁶ However, officials get frustrated when they hear stories of contractors paying off SMMEs and business forums behind closed doors, as this accommodation of extortion just “feeds the beast” and is based on short-term thinking.⁶⁷

When challenges arise, the JDA’s approach (like that of the MBDA) is to negotiate in order to find a way forward with SMMEs. Interdicts are rare but have happened, such as against business forums from Alexandra during the Rea Veya project. Officials are not aware of additional security ever being hired to secure sites from SMME threats of violence, although SAPS has been called at times, e.g., when officials were being threatened at their offices in Newtown, Johannesburg. The most difficult area is the greater Orange Farm, where a new phenomenon has emerged, of business forums

⁶³ Interview with city official J4, 3 March 2023.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Interview with city official J2, 2 March 2023.

demanding that contractors hire at a premium equipment from local SMMEs instead of bringing in their own equipment. According to JDA officials, the “City has accepted it as a norm” and so project leaders “need to make a decision [...] what to compromise. It’s a no brainer to manage the short-term risks” but, in the long term, “you are promoting an illegal practice”.⁶⁸ Yet even if officials take the hard route of not tolerating extortion, their efforts are often undermined by other entities who give in more readily to demands.

The SMME inclusion process

The JDA continuously refines its engagements with SMMEs, to ensure projects run more smoothly and processes are safeguarded against manipulation. Much like the MBDA, the JDA’s approach to SMME engagement is hands-on and highly engaged, with a team that leans on dedicated SMME development experts. The JDA has also made adjustments to its policies, such as taking more control of the subcontracting process instead of leaving it to the contractor. JDA officials view their process as quite unique in the City and are often seen as “lenient” or “soft” because of their willingness to engage with SMMEs. Like the MBDA, the JDA has an “open door policy” and makes time for SMME engagement, which is unheard of in most other entities or departments that leave dealing with SMMEs to the contractors – “Water guys are just appointing the contractor then saying [to SMMEs] ‘you’re on your own’”.⁶⁹

For the JDA, there is “no one-size-fits-all approach; projects might be the same, but the environments are dynamic and each area requires a different approach”.⁷⁰ The JDA has a standardised consultation process, but it is fluid and needs to be interpreted creatively to suit each unique situation and context. The process involves the following:

- Inform the community (including SMMEs) about the project. This is done through the ward councillor and occurs well before the start of the design phase.
- Include SMMEs in the design phase.
- Introduce the contractor to the community and announce the process for appointing the CLO. This meeting is held before work begins.
- Appoint the CLO through an interview process.
- Hire local labour for construction work.
- Set a date for the official SMME briefing.
- Appoint an external Community Participation Consultant (CPC) to coordinate SMME briefing.
- Determine work packages for local SMMEs between Construction Industry Development Board (CIDB) gradings 1 to 4. This is done by the JDA and contractor.
- Hold SMME briefing meeting, explaining the budgets and portions of work making up the 30% for local subcontractors. This is chaired by the JDA’s SMME Development Manager.
- SMMEs wanting to bid for work submit documents directly to the JDA to avoid manipulation of documents.
- Conduct compliance checks on registration documents and create a database of bidding SMMEs, which is given to the contractor. This is done by the CPC.
- Manage the bid evaluation process and conduct interviews with around 20 bidders. This is done by the contractor with the help of the CLO.
- Send a bill of quantities to all SMMEs of different CIDB grades.
- Present the list of appointments at a community meeting.
- Enter into contracts with successful SMMEs for different work packages. This is done by the contractor.

The JDA’s proactive, hand-on process recognises that SMMEs are legitimate members of a community to be included from the beginning of project conception, not just at the subcontracting stage. Including SMMEs in the design phase builds a sense of ownership around the project. Although manipulation remains a threat, particularly at bid evaluation stage, the JDA has taken several steps

⁶⁸ Interview with city official J5, 3 March 2023.

⁶⁹ Interview with city official J4, 3 March 2023.

⁷⁰ Interview with city official J5, 3 March 2023.

to prevent this. Another weakness in the process is the database of SMMEs, which requires a huge amount of time and resources to manage and verify hundreds of submissions by SMMEs.

The “make or break for the project” is the first SMME briefing of the work packages and budget “because it can be so sensitive”.⁷¹ The JDA’s SMME Development Manager chairs the meeting because it is important for communities to be addressed by the City as the “owner of the project”. At this point, the JDA practitioners need to be as transparent as possible, explain in great detail the procurement process and not create any expectations. However, irrespective of how tightly run and transparent the procurement process is, “when you come with the list of appointments, they [SMMEs] kill each other – they start trying to disqualify each other”.⁷² It is often at this point that forums emerge to try and destabilise the process and undermine successful SMMEs.

Unsuccessful bidders use various arguments to try and disqualify the successful candidates, such as claiming that they have benefited from previous contracts with other City entities; that better gender or youth representation is needed; or that they are not “local” (i.e., from another ward). The location of SMMEs has been a difficult requirement for cities to verify, as they use the Electoral Commission’s voting database for verifying addresses. However, the database is not always current or accurate and can be updated to match a new project site. To address this potential stumbling block, the JDA has started using a process of *physical verification*, whereby all SMME bidders for the subcontract must attend a meeting. At the meeting, every individual bidder stands up to be verified, by the rest of the group, whether they live in the area or not. If there are disputes and disagreements, the facilitating team will go to the house to determine whether they live there or not. This is an incredibly time-consuming process, but officials are adamant that it is the best way to avoid disputes later on.

Critical to the JDA’s SMME inclusion approach is the commitment of expert social facilitators to work on specific aspects of SMME engagement and development, including:

- Social facilitators (JDA staff assisting with SMME consultations).
- SMME Development Manager (JDA staff responsible for all engagement framework and development of SMMEs).
- CPCs (external consultants employed by the JDA).
- Construction mentors (JDA staff who assist subcontractors with the technical side of project management, such as meeting deadlines and tracking expenses).
- SMME Supervisor (part of the main contractor’s team who assists subcontractors with monitoring on-site activities and the daily rate of production).

SMME development is a crucial component of the JDA approach. As mentioned earlier, many disputes occur when subcontractors feel financially squeezed by the main contractors and are unable to realise the expected profit. Often due to a lack of experience, many SMMEs are not able to track project expenses, take too long on site, waste materials and overestimate potential profits. Underquoting by SMMEs desperate for work is also an issue. To mitigate this, in 2020, the JDA introduced Construction Mentors to assist SMMEs with tracking profits and expenses weekly. All main contractors also now have to employ a SMME Supervisor to oversee and assist with the technical work.

For the JDA officials, the following aspects are key to procuring fairly without capitulating to manipulation from multiple interest groups:

- Have a robust process that officials feel confident to stick to when accusations start getting thrown around.
- Take minutes, to have a body of evidence and prevent the process from being undermined later on.

⁷¹ Interview with city official J4, 3 March 2023.

⁷² Ibid.

- Be patient, “let things play out”,⁷³ and listen to and engage with the issues raised.
- Remember that “controversy is inevitable” and “if a project is important, there will be controversy”.⁷⁴
- Ensure the process is meticulous and transparent, as this provides less opportunity for manipulation.

It also helps the JDA that they often work in the same wards, such as the Inner City, where they can get to know the SMMEs and councillors and build a relationship with them over time.

⁷³ Interview with city official J4, 3 March 2023.

⁷⁴ Interview with city official J2, 2 March 2023.

7. Summary of Findings

7.1. The lack of SMME opportunities creates a high stake environment

Challenges brought about by SMMEs and business forums in the construction industry are, first and foremost, driven by a post-apartheid context of extreme inequality, poverty, and unemployment. The construction sector has not been able to create the expected number of opportunities for SMMEs due to decreasing investment in infrastructure by municipalities and a general lack of economic growth. The scarcity of opportunities (particularly for lower CIDB-graded SMMEs) combined with low compliance requirements have resulted in new entrant SMMEs flooding the space. Community members quickly establish themselves as construction companies at the promise of a new infrastructure project coming to an area, in the hope of getting a piece of the pie. Hundreds of SMMEs fight for just a handful of subcontracting opportunities, sometimes resorting to criminal tactics to put themselves ahead.

7.2. Business forums are not homogenous

The operating practices of business forums differ between cities as well as between different areas within the same city. Business forums can be strong in certain areas but non-existent in others and have different spatial configurations and organising methods. They offer a way for SMMEs to organise themselves around contestations, which may include but are not limited to procurement and allocation of subcontracts. Business forums are certainly not responsible for all disagreements or disruptions on site and not all forums use violence or site disruptions as an operating tactic. Certain forums have strong links to pre-existing gangs and share their spatial jurisdictions, while others present as city-wide social movements. The frequency and intensity of the violence and extortion on construction sites across Kwa-Zulu Natal appears to be an exception rather than the norm across the country.

7.3. “Mafia” is not always accurate

The term “construction mafia” does not always accurately describe the reality of how business forums operate. Business forums are not necessarily stable or hierarchal organisations but more often arrange themselves in relation to changing ward power dynamics (such as between gangs, ward structures etc.). Forums mobilise around different issues that emerge during the subcontracting and construction process, often acting as the voice of disgruntled SMMEs. Thus, the nature of many business forums is far more ad-hoc and opportunist than the term “mafia” denotes. The term has become a convenient excuse for any site-related issues and erases the real complexities of the sector and its failings to include and develop SMMEs.

7.4. A police response alone is insufficient

According to the city practitioners interviewed, most business forums do not employ overtly violent tactics and often take great care to avoid direct links to acts of physical violence. The procurement of subcontractors can be manipulated at many points that are not technically illegal. Furthermore, some site disruptions are due to business forums holding the city to account for not following the PPP regulations correctly. In this grey and muddy space, where lines of legality are blurred, a police response is not the solution, except for the most overtly violent or extortive incidents on site. Rather, the solution lies in understanding and addressing the underlying failings of the construction sector to incorporate SMMEs in a transparent, regulated, and developmental manner.

7.5. There is no agreed approach to SMME inclusion

The lack of a clearly defined approach to SMME inclusion, engagement and development has resulted in public-sector entities undermining each other's efforts. Approaches to SMME inclusion between cities and within cities range on a spectrum from a reactive/hands-off "business as usual" approach to a proactive/participatory social compacting approach. The "business as usual" method is most common and often results in cities needing to act reactively later on in the project to quell tensions and keep the project moving, sometimes resorting to accommodating the demands of business forums. The contradictory approaches to engaging with SMMEs makes it difficult to present a unified stance to combat extortion. Cities and departments do not share experiences and best practices with each other, and often project managers are left to work out how to navigate the SMME landscape on their own.

7.6. The sector is unregulated

An individual can at any time register themselves as a construction company through the CIDB without needing to demonstrate construction skills or previous work. The construction sector was deliberately positioned as a low-barrier industry for new entrants to stimulate employment for previously disadvantaged individuals. However, lack of regulation or compliance requirements has made it difficult to separate genuine SMMEs from opportunists looking for short-term gains. The lack of well-managed SMME databases to organise SMME compliance information also makes it difficult to determine SMMEs' capabilities and previous track records. Increasing barriers to entry is a complex intervention and is potentially exclusionary. However, there needs to be a minimum requirement for SMMEs to demonstrate an interest in business development and growing their construction skills.

7.7. PPP is a legitimising tool of business forums

National Treasury's PPP legislation is used to legitimise the demands from business forums to 30% of the project work package, who are described as becoming emboldened and entitled by the policy. The details of the regulations often get misinterpreted by business forums who see themselves as entitled to the 30% regardless of project's size and nature, or whether it's privately or publicly funded. The implementation of the PPP legislation was also not clearly defined, and cities are left to themselves to interpret the details of implementation.

7.8. Local procurement is vulnerable to manipulation

Across the case studies, potential points of vulnerability were identified in the procurement process, often resulting in contestations. These include interference by unsuccessful SMMEs challenging appointments and seeking to disqualify successful SMMEs; the involvement of ward councillors and CLOs to influence appointments; and powerful forums threatening the contractor involved in the bid process. The procurement process often sees SMMEs being used to fight political battles. The lack of a transparent procurement process as well as a reliable SMME database, means that the process is open to manipulation at various points.

7.9. Cities overly rely on contractors for SMME engagement

The procurement of subcontractors is legally the responsibility of the main contractor. On most infrastructure projects, the city relies entirely on the contractor for all SMME engagement, subcontracting and development. However, officials reflect that contractors are not necessarily best suited to deal with the intricacies of navigating SMME dynamics. Often cities have to get involved with

SMMEs when the project stalls due to disputes, but this reactive way of working does not engender a meaningful engagement approach. In the cases where cities do use proactive participatory and engaged approaches with SMMEs, the projects clearly benefit.

7.10. SMME development is missing

Cities' over-reliance on contractors also impacts the development of SMMEs, as contractors are understandably more concerned with making a profit than spending time and resources on SMME development. For new SMMEs, subcontracts can be incredibly difficult to manage, and they often find themselves struggling to meet deadlines and financial returns. SMMEs often feel exploited by the main contractor or experience financial losses due to a lack of experience, guidance, or supervision. The development of SMMEs is crucial for professionalising the industry and seeing SMMEs moving upwards from low CIDB gradings, growing their businesses and becoming employers in their communities. Where city entities have invested in SMME development and on-site supervision, projects have benefited by staying on track and meeting quality requirements.

7.11. Social facilitation is key to SMME inclusion

Many cities have recognised that social facilitation is critical for working with SMMEs in what has become a sensitive and often hostile environment. Consultation and engagement are key, and SMME inclusion needs to be seen as part of a broader community participation approach. However, government is typically outcomes-oriented and not enough time or resources is given to facilitation processes. Certain development agencies prioritise social facilitation and are able to dedicate time to facilitation processes to ensure that grievances are dealt with robustly and meticulously. They understand the importance of dealing with SMMEs with respect and professionalism to neutralise hostilities and forge a constructive working relationship.

7.12. Innovative practices for SMME inclusion do exist

Some city departments and agencies, such as the MBDA and JDA, are far ahead in terms of successful SMME inclusion practices, which are proactive, engaged, and hands-on. They invest in social facilitators, prioritise SMME development, work through the ward councillors and do not rely on contractors to be the only SMME interface. The institutionalisation of an SMME inclusion approach requires a robust process and building a reputation of zero-tolerance to extortion. The process includes establishing an inclusive project steering committee, building relationships with community leaders, sharing upfront risk awareness and consensus-building, and including SMMEs in project design. Other factors include taking SMME grievances seriously, having an open-door policy for communication and using a nuanced interpretation of "local" to benefit areas fairly.

8. Conclusion and Recommendations

Addressing site disruptions across the country requires dealing with the underlying drivers of SMME inclusion challenges. In a context of extreme poverty and high unemployment, the scarcity of opportunities, coupled with the potential lucrativeness of each contract, creates a high-stakes and hostile environment within an unregulated sector. Government deliberately designed the subcontracting of SMMEs as a low-barrier-to-entry employment solution for unskilled and semi-skilled people, with few compliance requirements when registering as a construction company. However, government has no coherent national strategy for SMME inclusion to balance out this loose, unregulated approach, leaving the sector vulnerable to aggressive manipulation and allowing SMME tactics to go unchecked and take advantage of the sector's neglect of them.

City departments and project managers have been left on their own to figure out what to do. As a result, different cities, departments within cities and even teams within departments have very different approaches to engaging with SMMEs. Approaches range from reactive and hands-off "business-as-usual" (leaving the process to contractors and only getting involved when there are issues on site) to proactive, engaged social compacting (using a hands-on and participatory approach from the outset of the project).

As the case studies have shown, the process of SMME inclusion will never be without complexities and tensions. Keeping the bus moving requires navigating a delicate – and at times sensitive – process, bringing on board adept social facilitators and finding ways to manoeuvre through the tensions, complexities and blockages. Practitioners need to be aware of the dynamics and find solutions that are appropriate to each unique situation, supported by a coherent vision of SMME inclusion that is governed by transparency and hands-on engagement. Business forums have the potential to be crucial pieces of the local development puzzle and provide opportunities for SMMEs to grow and develop without the use of violence and extortion. To this end, the following recommendations are made:

8.1. Recommendations

Finding	Recommendation
The lack of SMME opportunities creates a high-stakes environment	<ul style="list-style-type: none"> • Public infrastructure projects need to be designed with SMME opportunities in mind • Economic Development departments need to take a more active role in creating opportunities across government projects
Business forums are not homogenous	<ul style="list-style-type: none"> • A forum of knowledge sharing is needed: cities need to share insights and practice between each other to find ways to manoeuvre through complexities and potentially disruptive and violent incidents when they arise • More research is needed to understand the different ways in which business forums are operating • SMMEs need to be better organised with a representative body so that uniform communication/negotiation between role players and SMMEs can take place
“Mafia” is not always accurate	<ul style="list-style-type: none"> • The media needs to be more nuanced with how it reports about construction site disruptions • More research is needed to understand the different ways in which business forums are operating
A police response alone is insufficient	<ul style="list-style-type: none"> • Zero-tolerance on extortion and “protection money” • SAPS needs to be more proactive with responding to on-site violence • Intelligence needs to play a role in combating organized crime • Government needs responses beyond policing to deal with the underlying drivers • Communities needs to speak out against extortion where it's taking place to protect their development projects
No agreed approach to SMME inclusion	<ul style="list-style-type: none"> • National framework or practice guideline is needed for local SMME inclusion to guide practitioners and establish coherence • City departments and entities must be on the same page with regards to SMME engagement philosophies • A forum of practice sharing: cities need to share insights and practice between each other to find ways to manoeuvre through complexities and potentially disruptive and violent incidents when they arise • Procurement policies should also guide SMME components in the procurement processes.
The sector is unregulated	<ul style="list-style-type: none"> • CIDB needs to assist with the grading of SMMEs to prioritise those that want to develop • SMMEs need to enter into a skills development plan as part of their awarding of tender • Ward councillors need to play a more active role
PPP is a legitimising tool	<ul style="list-style-type: none"> • National Treasury needs to address the PPP misinterpretations and provide guidance
Local procurement is vulnerable to manipulation	<ul style="list-style-type: none"> • City databases of SMMEs per ward need to be developed and resources given for their ongoing management

<p>Cities need to take responsibility for SMME inclusion</p>	<ul style="list-style-type: none"> • Cities as the procuring entity need to play a more hands-on role and not leave it to the contractors to interface with SMMEs alone • Cities need to know how to involve themselves constructively without “interfering” as they are often best placed to deal with some of the disputes
<p>SMME development is missing</p>	<ul style="list-style-type: none"> • Contractors and the private sector need training on SMME development • It must be mandatory for contractors to have dedicated SMME supervisors • An action plan for skills development for SMMEs in the contract between the city and contractor must be included which must be reviewed at the termination of the contract • Institutions such SAICE, CIDB, SARF, ECSA, need to play a more active role in this matter • Cities must have SMME development specialists • Databases need to reflect the development of SMMEs and record training undertaken and track progress • SEDA (Small Enterprise Development Agency) must also be engaged
<p>Social facilitation is key to SMME inclusion</p>	<ul style="list-style-type: none"> • Engineering and built environment students and practitioners need training in soft skills and community/SMME participation • Social facilitators need to become mandatory in all city departments that implement infrastructure projects
<p>Innovative practices for SMME inclusion do exist</p>	<ul style="list-style-type: none"> • Knowledge and practice sharing platforms are needed between and within cities, including implementing agencies and economic development departments • An SMME engagement policy is needed to know how to deal with SMMEs

Source: Co-created with practitioners through interviews as well as a Learning Exchange on 24 May 2023 with city officials