

THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT COMMISSION'S

PRACTICE GUIDE 01 of 2023

UNDERSTANDING A BROAD-BASED BLACK ECONOMIC EMPOWERMENT VERIFICATION PROCESS: A GUIDE FOR ORGANS OF STATE AND PUBLIC ENTITIES

A. Introduction

1. The Broad-Based Black Economic Empowerment Commission (“B-BBEE Commission”) is an entity established by the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended by Act 46 of 2013 (“the Act”), to oversee the implementation of the Act, which includes provision of practice guides, explanatory notices, non-binding advisory opinions and clarification services to improve the understanding of the Act.
2. This Practice Guide is issued as a non-binding guide purely to assist organs of state and public entities with preparing for a B-BBEE verification process in line with the reporting requirements under section 13G (1) of the B-BBEE Act, read with regulation 12 of the B-BBEE Regulations.
3. This Practice Guide does not constitute a legal document or a ruling of the B-BBEE Commission on the issue concerned. Rather, it sets out the approach that the B-BBEE Commission is likely to take on any matter relating to implementation of B-BBEE including the process of how organs of state and public entities prepare for a verification process.

B. Purpose of this practice guide

4. The Codes of Good Practice (the Codes) in paragraph 3.1.1 of Statement 000, recognises all organs of state and public entities as measured entities, which means that they are required to implement the B-BBEE Codes and be measured against such compliance.

5. The measurement of organs of state and public entities is carried in line with Statement 004 (also known as the specialised scorecard). The specialised scorecard is found under the amended generic codes or specific sector code where applicable, and only requires organs of state and public entities to comply with the management control, skills development, enterprise and supplier development and socio-economic development elements.
6. Following engagements with a number of organs of state and public entities, the B-BBEE Commission has observed that many of these entities struggle with record keeping for B-BBEE purposes and that has a negative impact on the outcomes of their verification process. Therefore, the B-BBEE Commission has deemed it necessary to issue this guide to assist organs of state and public entities as to the nature of information to be kept under each element of the specialised scorecard.

C. Statement 004 or Specialised Scorecard

7. Statement 004 classify entities into three categories, that is exempted micro-enterprise (EME), qualifying small enterprise (QSE) and generic enterprise, based on the total annual revenue (where applicable) or allocated budget or gross receipts or discretionary spend.
8. An EME (R10 million and less) qualifies for automatic level 4 B-BBEE Status. However, where it has 51% of black people as its beneficiaries, it will be enhanced to level 2 B-BBEE status. If it has 75% of black people as beneficiaries, the entity will be enhanced to level 1 B-BBEE Status. Specialised EMEs are only required to obtain a B-BBEE sworn affidavit for specialised EMEs.
9. A QSE (between R10 million and R50 Million) has to be subjected to a verification process and be measured by an accredited verification agency or professional (<http://www.sanas.co.za>) to obtain a B-BBEE certificate. But if it has 51% of black people as beneficiaries, it will automatically be enhanced to level 2 B-BBEE status, and where it has 75% of black people as beneficiaries, it will automatically receive level 1 B-BBEE status. Specialised QSEs with automatic levels 1 and 2 B-BBEE status are only required to obtain a sworn affidavit for specialised QSEs.
10. A Generic Enterprise (R50 million and above) is required to be verified by an accredited verification agency or professional (<http://www.sanas.co.za>) to obtain a B-BBEE certificate.

D. A B-BBEE Verification Process

11. B-BBEE verification means the process and activities conducted by a verification professional or agency to assess, verify and validate that the score awarded to a measured entity (organ of state

and public entity) is a result of individual scorecard elements supplied by a measured entity, and to evaluate B-BBEE initiatives in order to provide an indicative B-BBEE score and certification based on the principles of B-BBEE as per the Codes.

12. A verification process is important in assuring parties that rely on the score achieved by the measured entity and reflected on their B-BBEE verification certificate (refers to the B-BBEE verification certificate issued by the verification professional or agency which reflects the overall B-BBEE Status of a measured entity and scoring allocated for each scorecard element verified in respect of the measured entity) that the information on which the certificate was issued is acceptable, and has been independently verified, and is free from misstatements.
13. Therefore, the role of a verification professional or agency is to assess, verify and validate both disclosed and undisclosed B-BBEE related information of the measured entity. The verification, thereof, should be based on the principles contained in the B-BBEE Act and relevant Codes, by applying the verification methodologies outlined in the Framework for accreditation and verification by all verification agencies (also known as the verification manual) as well as the Accreditation of B-BBEE Verification Agencies document (also referred to as the R47-03) issued by the South African National Accreditation System (SANAS. It is important to note that the role of a verification professional or agency is not to express an opinion on interpretation of any B-BBEE matter, as the legislation (B-BBEE Act) assigns the role of the B-BBEE Commission. The B-BBEE Commission services in this regard can be accessed through the contact details mentioned below.

E. What is required to claim B-BBEE Points?

14. Every B-BBEE claim must be accompanied by relevant evidence in order for the organ of state or public entity to recognise points during a B-BBEE verification process. If evidence cannot be produced, the organ of state or public entity will not score any points and can be at the risk of receiving a non-compliant status or be discounted on its overall B-BBEE status.
15. Therefore, for each element, the organ of state or public entity at a minimum will need to produce the following information (this list does not replace the process outlined in the verification manual):

B-BBEE Element	Minimum Evidentiary Documents Required
Ownership	Not applicable for specialised entities.

Management Control	<ul style="list-style-type: none"> • List of board members/equivalent structure where applicable • Organogram showing management levels and all occupational levels signed by HR • Latest COR 39 issued by the Companies and Intellectual Property Commission (CIPC, where applicable) • Consent to act as directors (all executive and non-executive directors) or CM37 issued by CIPC • Certified copies of identity documents (ID) of sampled directors and managers • EEA1 forms for all black directors and managers • Contract of employment or appointment letters for all black executives and managers • Payslips for all executive directors, and all managers • Minutes of meetings of board and executive committee signed by all attending members • Copy of EEA2 and EEA4 to Department of Labour and Employment, as well as confirmation in respect of EEA2 from the department • Payroll report printed from company payroll system • Annual report indicating full name, race, gender, position, occupational level, ID number, nationality, salary costs breakdown, and start date • Employees with disabilities: <ul style="list-style-type: none"> ○ Completed EEA1 ○ Copy of IDs ○ Medical certificate confirming that the employee is a person with disability
Skills Development	<ul style="list-style-type: none"> • Letter from SETA confirming client is a registered levy paying member • Proof of submission and approval from registered SETA acknowledging receipt of WSP/ATR • Proof that the company has implemented pivotal training • AMP201 where entity has a skills development facilitator (either internal or external) • For Skills Development Facilitator (SDF) <ul style="list-style-type: none"> ○ Contract of SDF and any trainers ○ Payslip of SDF and trainers ○ Registration of SDF as company representative at applicable

	<p style="text-align: center;">SETA</p> <ul style="list-style-type: none"> • For external training: <ul style="list-style-type: none"> ○ Sample invoices for external training and proof of payments for external training ○ Sample certificates of completion for training ○ Sample training registers • Bursary policy and bursary agreements • For Learnerships: <ul style="list-style-type: none"> ○ Approved learnership contract from SETA ○ Payslip of learner indicating start date of learner ○ Learnership agreements ○ Learner IDs ○ EEA1 forms for learners ○ Sample training registers ○ For unemployed learners, UIF documents or proof that the learner was unemployed prior to becoming a learner at the company (affidavits from unemployed learners) • Valid Tax Clearance Certificate (where applicable) • Letter from SETA confirming client is a registered levy paying member • Proof of submission and approval from registered SETA acknowledging receipt of WSP/ATR • Proof that the company has implemented pivotal training • AMP201 where entity has a Skills Development Facilitator (either internal or external) • For disabled learners: <ul style="list-style-type: none"> ○ Doctors letter confirming disability for all disabled training or grant forms ○ EEA1 forms for disabled learners ○ A signed letter from HR or company where previous unemployed learners have been placed, confirming when the employee was first engaged with the Measured Entity ○ Affidavit from unemployed learner confirming they were unemployed prior to the learning programme and that they are currently employed. • For International Training: <ul style="list-style-type: none"> ○ Proof that the course is aligned to SAQA standards.
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Enterprise and Supplier Development	<ul style="list-style-type: none"> • B-BBEE certificate and sworn affidavits/CIPC certificates for all suppliers • Schedule of EMEs and black owned QSE • Invoices from supplies and proof of payment • For Imports: <ul style="list-style-type: none"> ○ List of imports excluded from total measured procurement spend ○ Affidavit from management confirming why the import should be excluded ○ For brand reasons: The company to prove that they have established a local supplier to replace this import going forward. All programmes and documents will be verified. ○ For products not available in SA: the company must show that this product is not available in SA ○ SARS Value-Added Tax declaration in respect of imported goods / service. ○ SARS Importer Registration Certificate or other confirmation from SARS confirming the import number of the Measured Entity • Supplier Development and enterprise development: <ul style="list-style-type: none"> ○ Obtain a valid B-BBEE certificate or sworn affidavit, ○ Supplier Development agreements and Enterprise Development agreements signed by both parties in line with B-BBEE approved criteria for supplier development and enterprise development spend ○ Supplier/enterprise development programme signed and dated must be within the financial year ○ Invoices and proof of payments of enterprise and supplier development funds to the beneficiary entity ○ Letters confirming receipt of the supplier/enterprise development support from beneficiary entity after implementation of the support
Socio-Economic Development	<ul style="list-style-type: none"> • Affidavit from beneficiary confirming black South African status, if individual) • Certified ID (if contribution to individuals) • Socio-economic development agreement • Independent persons' report confirming black beneficiary status as defined and confirming donations • Independent persons' report confirming 75% of donations were

	<p>distributed to at least 75% black beneficiaries as defined</p> <ul style="list-style-type: none"> • B-BBEE certificate or sworn affidavit if an organisation is the beneficiary • Profile of organisation • Invoice from recipient • Proof of payments • Letters confirming receipt of the initiative after implementation
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16. Most of organs of state and public entities are not able to recognise points due to lack or limited record keeping. Therefore, all organs of state and public entities are required to ensure that information required for a B-BBEE verification process is collected on month-to-month basis or quarterly, whichever is suitable.
17. A feedback session with the verification professional or agency when the preliminary results of the B-BBEE verification process are communicated is important so that the organ of state and public entity can understand the interpretation of their own B-BBEE certificate

F. Commencement of the Verification Process

18. Regulation 12 (2) of the B-BBEE Regulations has stated that spheres of government, organs of state and public entities must file the audited annual financial statements and annual report compiled in terms of section 13G(1), with the B-BBEE Commission, within thirty (30) days of the approval of such audited financial statements and annual report. [NB: approval is by Executive Officer].
19. Most organs of state and public entities fail to meet the aforementioned reporting timeline. Therefore, all spheres of government, organs of state and public entities are required to ensure that they start the verification process by May of each year using Management Accounts, to ensure that the verification professional or agency is provided with the approved audited financial statements to adjust the report accordingly and issue the entity with the final B-BBEE certificate.

G. Conclusion

20. This Practice Guide is issued as a guide purely to assist organs of state and public entities to better prepare for a verification process.

21. This Practice Guide may be updated by the B-BBEE Commission if there are any material changes arising from developments in the application of the B-BBEE Act. In such an instance, an amended version will be published to replace this one.

22. For any queries or further clarity on this Practice Guide, kindly feel free to contact us at the following contact details:

B-BBEE Commission

Private Bag X31

Pretoria

0001

Telephone: +27 12 394 1535 or +27 82 903 6398

Email: MRamare@beecommission.gov.za

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