



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TO ALL: ACCOUNTING OFFICERS OF DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS

ACCOUNTING AUTHORITIES OF ALL SCHEDULE 2 AND 3 PUBLIC ENTITIES

HEAD OFFICIALS OF PROVINCIAL TREASURIES

ACCOUNTING OFFICERS OF ALL MUNICIPALITIES AND MUNICIPAL ENTITIES

NATIONAL TREASURY SUPPLY CHAIN MANAGEMENT CIRCULAR 5 of 2016/17

SUBMISSION OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL CERTIFICATES AND SWORN AFFIDAVITS

1. PURPOSE

This Circular serves to provide guidance to Accounting Officers (AOs) and Accounting Authorities (AAs) on the issuance and validity of B-BBEE Status Level Certificates and sworn affidavits for Exempted Micro Enterprises (EME) and Qualifying Small Enterprises (QSE).

2. ELIGIBILITY AS AN EXEMPTED MICRO-ENTERPRISE (EME)

2.1 The Codes of Good Practice, 2013 (The Codes) under section 9(1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) defines an EME as any enterprise with annual total revenue of R10 million or less.

EME level of contribution

- 2.2 An EME automatically qualifies as a **Level 4 contributor** with B-BBEE recognition level of 100% in terms of the Codes of Good Practice.
- 2.3 An EME with at least 51% black ownership qualifies as a **Level 2 contributor** with B-BBEE level of 125% in terms the Codes of Good Practice.
- 2.4 An EME with 100% black ownership qualifies as a **Level 1 contributor** with B-BBEE level of 135% in terms of the Codes of Good Practice.
- 2.5 An EME that is regarded as a specialised enterprise¹ with at least 75% black beneficiaries qualifies as a **Level 1 contributor** with B-BBEE level of 135% in terms of the Codes of Good Practice.

¹ **Specialised Enterprise** means a Company limited by guarantee, Higher Education Institution, Non-profit Company, Public Entity and other Enterprises exclusively owned by Organs of State and public benefit sachelm or Public benefit organisation.

- 2.6 An EME that is regarded as a specialised enterprise with at least 51% black beneficiaries qualifies as a **Level 2 contributor** with B-BBEE level of 125% in terms of the Codes of Good Practice.

Points claim in terms of the preferential procurement regulations 2011 by an EME

- 2.7 An EME is required to submit a sworn affidavit confirming their **annual total revenue of R10 million or less and level of black ownership** or a B-BBEE level verification certificate to claim points as prescribed by regulation 5 and 6 of the Preferential Procurement Regulations, 2011.
- 2.8 An EME that is regarded as a Specialised Enterprise, is required to submit a sworn affidavit confirming their **annual turnover/ allocated budget/ gross receipt of R10 million or less and level of percentage of black beneficiaries** or a B-BBEE level verification certificate to claim points as prescribed by regulation 5 and 6 of the Preferential Procurement Regulations, 2011.
3. **ELIGIBILITY AS QUALIFYING SMALL ENTERPRISES (QSE)**
- 3.1 The Codes defines a QSE as any enterprise with annual total revenue of between R10 million and R50 million.
- QSE level of contribution**
- 3.2 A QSE with at least 51% black ownership qualifies as a **Level 2 contributor**.
- 3.3 A QSE with 100% black ownership qualifies as a **Level 1 contributor**.
- 3.4 A QSE that is regarded as a specialised enterprise with at least 75% black beneficiaries qualifies as a **Level 1 contributor** with B-BBEE level of 135% in terms of the Codes of Good Practice.
- 3.5 A QSE that is regarded as a specialised enterprise with at least 51% black beneficiaries qualifies as a **Level 2 contributor** with B-BBEE level of 125% in terms of the Codes of Good Practice.
- 3.6 **Points claim in terms of the Preferential Procurement Regulations 2011 by a QSE**
- 3.7 A QSE, is required to submit a sworn affidavit confirming their **annual total revenue of between R10 million and R50 million and level of black ownership** or a B-BBEE level verification certificate to claim points as prescribed by regulation 5 and 6 of the Preferential Procurement Regulations, 2011.
4. A QSE that is regarded as a specialised enterprise, is required to submit a sworn affidavit confirming their **annual turnover/ allocated budget/ gross receipt of R50 million or less and level of percentage of black beneficiaries** or a B-BBEE level verification certificate to claim points as prescribed by regulation 5 and 6 of the Preferential Procurement Regulations, 2011.

5. SUBMISSION OF B-BBEE STATUS LEVEL CERTIFICATES

- 5.1 Bidders other than EMEs and QSEs are required to submit an original or certified copy of B-BBEE status level certificates to claim points in terms of regulation 5 and 6 of the Preferential Procurement Regulations, 2011.

6. AUGMENTATION OF STANDARD BIDDING DOCUMENT (SBD) AND MUNICIPAL BIDDING DOCUMENT (MBD) 6.1

- 6.1 The Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.1 "Preference point claim form in terms of the Preferential Procurement Regulations" has been augmented to cater for the latest requirements on the acceptance of sworn affidavits.
- 6.2 The SBD 6.1 and MBD 6.1 attached to this circular replaces the SBD 6.1 and MBD 6.1 issued in terms SCM Circular: dated 01 December 2011: Implementation guide: Preferential Procurement Regulations, 2011.

7. REPEAL OF CIRCULAR DATED 29 FEBRUARY 2012 AND CIRCULAR DATED 2 SEPTEMBER 2015

This Circular repeals the Circular on Issuance and Validity of Broad-Based Black Economic Empowerment (B-BBEE) status level certificates in respect of Exempted Micro Enterprises (EMEs) dated 29 February 2012 and the Circular on Acceptance of Sworn Affidavits in terms of the amended B-BBEE Codes dated 02 September 2015.

8. ENQUIRIES

Any enquiries in respect of B-BBEE Status Level Certificates may be directed to the Department of Trade and Industry as follows:

Ms Janeez Hafizulla
Director: Procurement Transformation and Verification
Tel: (012) 394 1694
Fax: (012) 394 2694
E-mail: JHafizulla@thedti.gov.za

9. APPLICABILITY

This Circular applies to all National and Provincial Departments, Constitutional Institutions, Public Entities listed in schedules 2 and 3 to the PFMA and Municipalities and Municipal Entities to which the MFMA applies.

10. DISSEMINATION OF INFORMATION CONTAINED IN THIS CIRCULAR

- 10.1 Accounting Officers of National and Provincial Departments are requested to bring the contents of this Circular to the attention of Accounting Authorities and the Supply Chain Management Officials of Schedule 3A and 3C Public Entities reporting to their respective Executive Authorities.
- 10.2 Heads of Provincial Treasuries are requested to bring the contents of this circular to the attention of Accounting Officers and Supply Chain Management Officials of their respective Provincial Departments.

National Treasury SCM Circular 5 of 2016/2017

SUBMISSION OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) STATUS LEVEL CERTIFICATES AND SWORN AFFIDAVITS

- 10.3 Accounting Officers of Municipalities and Municipal Entities are requested to bring the contents of this Circular to the attention of the Supply Chain Management Officials of their Municipalities and Municipal Entities.
- 10.4 Accounting Authorities of Schedule 2, 3B and 3D Public Entities are requested to bring the contents of this Circular to the attention of the Supply Chain Management Officials of their Public Entities.

11. CONTACT INFORMATION

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ESTELLE SETAN
ACTING CHIEF PROCUREMENT OFFICER
DATE: 26/4/2016

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2011**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids.
- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the..... preference point system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTION	
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) "B-BBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) "B-BBEE status level of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard

- contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) as amended by Act No 46 of 2013;
- (f) **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **"non-firm prices"** means all prices other than "firm" prices;
- (m) **"person"** includes a juristic person;
- (n) **"QSE"** means a Qualifying Small Enterprise as defines by Codes of Good Practice issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where

- P_s = Points scored for comparative price of bid under consideration
- P_t = Comparative price of bid under consideration
- P_{min} = Comparative price of lowest acceptable bid

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating

issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

7.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit)

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted?
(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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8.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted..... %
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME.....

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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9. DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of company/firm:.....
- 9.2 VAT registration number:.....
- 9.3 Company registration number:.....

9.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
 - One person business/sole propriety
 - Close corporation
 - Company
 - (Pty) Limited
- [TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

9.6 COMPANY CLASSIFICATION

- Manufacturer
 - Supplier
 - Professional service provider
 - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated:

Registered Account Number:

Stand Number:

9.8 Total number of years the company/firm has been in business:.....

9.9 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from

obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

- (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

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