

 Eskom	Guidelines	Procurement & Supply Chain Management (P&SCM)
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Title: **P&SCM Guidelines for Evaluation of B-BBEE Sworn Affidavits**

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Content

	Page
1. Introduction.....	3
2. Supporting Clauses.....	3
2.1 Scope.....	3
2.1.1 Purpose.....	3
2.1.2 Applicability.....	4
2.1.3 Effective date.....	4
2.2 Normative/Informative References.....	4
2.2.1 Normative.....	4
2.2.2 Informative.....	4
2.3 Definitions.....	4
2.3.1 Document:.....	4
2.4 Abbreviations.....	4
2.5 Roles and Responsibilities.....	4
2.6 Process for Monitoring.....	5
2.7 Related/Supporting Documents.....	5
3. Document Content.....	5
4. Acceptance.....	6
5. Revisions.....	6
6. Development Team.....	6
7. Acknowledgements.....	6
Appendix A – Definition of EME and QSE.....	7

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1. Introduction

The document supports with the evaluation of B-BBEE Sworn affidavits when conducting P&SCM bid evaluations across Eskom. This document is applicable to EME and QSE affidavits and should not be used to evaluate SANAS accredited B-BBEE rating certificates. All concerns on B-BBEE certificates must be referred to the Divisional SDL&I functions and/or subsequently to SDL&I Corporate. This guideline is intended to ensure a fair assessment of B-BBEE Sworn Affidavits and to also assist in improving the efficiency of the P&SCM bid evaluation process.

2. Supporting Clauses

2.1 Scope

According to the B-BBEE Codes of Good Practice, 11 October 2013, entities that are EME are only required to obtain a Sworn Affidavit on an annual basis confirming the following:

- Annual total turnover of R10 million or less.
- Level of Black Ownership (Level 1 = 100% Black Owned; Level 2 = 51% Black Owned).

QSE entities that are 100% Black Owned qualify for a Level One B-BBEE recognition whilst QSE entities that are at least 51% Black Owned qualify for a Level Two B-BBEE recognition. Such QSE entities are only required to obtain a Sworn Affidavit on an annual basis confirming the following:

- Annual Turnover of R50 million or less;
- B-BBEE Level of Black Shareholding

This document is meant to embed the fundamental principle for measuring B-BBEE compliance that substance takes precedence over legal form. This is in accordance to the B-BBEE Act as per the South African Constitution.

2.1.1 Purpose

The purpose of this Guideline is to avoid disqualifying bidders on other trivial requirements that are not substantive when completing the B-BBEE Affidavit which end up stalling and delaying P&SCM processes. It accords responsibility to SDL&I managers the impetus to correct some of the inefficiencies or ambiguities that are encountered in the B-BBEE affidavit evaluation process. The fundamental principle for measuring B-BBEE compliance is that **substance takes precedence over legal form.**

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2.1.2 Applicability

This document shall apply throughout Eskom Holdings Limited Divisions and Subsidiaries in the evaluation of tenders.

2.1.3 Effective date

Signature date is the effective date.

2.2 Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

2.2.1 Normative

- [1] Broad-Based Black Economic Empowerment Act, No 53, 2003
- [2] B-BBEE Codes of Good Practice, 2013
- [3] Practice Guide 1 of 2018, Determining the Validity of a B-BBEE Certificate and Sworn Affidavits.

2.2.2 Informative

- [1] Constitution of the Republic of South Africa; 1993.

2.3 Definitions

Not Applicable

2.4 Abbreviations

Abbreviation	Explanation
BO	Black Owned
EME	Exempted Micro Enterprise
QSE	Qualified Small Enterprise
B-BBEE	Broad-Based Black Economic Empowerment
CIPC	Companies and Intellectual Property Commission
CSD	Central Supplier Database
SDL&I	Supplier Development, Localisation and Industrialisation
P&SCM	Procurement and Supply Chain Management

2.5 Roles and Responsibilities

To be used by all officials evaluating tender documents for the procurement of goods and services in Eskom.

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2.6 Process for Monitoring

SDL&I Managers will monitor the evaluation process and ensure that this guideline is applicable across Eskom, they reserve the right to amend/intervene in any SDL&I evaluation that they view as being unfairly conducted.

2.7 Related/Supporting Documents

These will be the documents submitted by the bidders as supporting information/documents, submitted with the tendering documents by bidders.

3 Evaluation of B-BBEE Sworn Affidavits

3.1 Completion of Sworn Affidavits

Sworn Affidavits must be completed in full in line with the below requirements:

- a) Name/s of deponent as they appear in the identity document and the identity number.
- b) Designation of the deponent as either the director, owner or member must be indicated in order to know that person is duly authorised to depose of an affidavit.
- c) Name of enterprise as per enterprise registration documents issued by the CIPC, where applicable, and enterprise business address.
- d) Percentage of black ownership, black female ownership and designated group. In the case of specialised enterprises as per Statement 004, the percentage of black beneficiaries must be reflected.
- e) Indicate total revenue for the year under review and whether it is based on audited financial statements or management account.
- f) Financial year end as per the enterprise's registration documents, which was used to determine the total revenue.
- g) B-BBEE Status level. An enterprise can only have one status level.
- h) Empowering supplier status must be indicated. For QSEs, the deponent must select the basis for the empowering supplier status.
- i) Date deponent signed and date of Commissioner of Oath must be the same.
- j) Commissioner of Oath cannot be an employee or ex officio of the enterprise because, a person cannot by law, commission a sworn affidavit in which they have an interest.

3.2 Notwithstanding the above, only the following renders Sworn Affidavit invalid and tenderer disqualified from the tender process:

- 1 Not signed by deponent.
- 2 Not signed and stamped by Commissioner of Oath on the same date as deponent.
- 3 Expired sworn affidavit.
- 4 In-line with clause 3.1 above.

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The tenderer shall be required to submit a fully and correctly completed Sworn Affidavit prior to contract award. This allows the evaluator to use supporting documents submitted by the bidder as a base to verify some of the information stated in the B-BBEE affidavit.

4 Acceptance

This document has been seen and accepted by:

Name	Designation
Allan Ranganthan	Commercial Manager: SDL&I
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5 Revisions

1. Date	2. Rev.	3. Compiler	4. Remarks
August 2022	1	P Ndabula	New document

6 Development Team

The following people were involved in the development of this document:

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7 Acknowledgements

Not Applicable

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Annexure A Definition of EME and QSE

4.1. Excerpt from the Amended Codes of Good Practice

4. ELIGIBILITY AS AN EXEMPTED MICRO ENTERPRISE (EME)

4.1 Any enterprise with an annual Total Revenue of R10 Million or less qualifies as an Exempted Micro-Enterprise.

4.2 An Exempted Micro-Enterprise is deemed to have a B-BBEE Status of "Level Four Contributor" having a B-BBEE recognition level of 100% under paragraph 8.2.

4.3 Enhanced B-BBEE recognition level for an Exempted Micro-Enterprise:

4.3.1 Despite paragraphs 4.2 an EME which is 100% Black owned qualifies for elevation to "Level One Contributor" having a B-BBEE recognition level of 135%.

4.3.2 Despite paragraph 4.2 and 4.3.1, an EME which is at least 51% Black owned qualifies for elevation to "Level Two Contributor" having a B-BBEE recognition level of 125%.

4.4 Despite paragraphs 4.2 and 4.3, an EME is allowed to be measured in terms of the QSE scorecard should they wish to maximise their points and move to a higher B-BBEE recognition level.

4.5 An EME is only required to obtain an sworn affidavit on an annual basis, confirming the following:

4.5.1 Annual Total Revenue of R10 million or less; and

4.5.2 Level of Black ownership.

4.6 Any misrepresentation in terms of Para 4.5 above constitutes a criminal offence as set out in the B-BBEE Act as amended.

5. ELIGIBILITY AS A QUALIFYING SMALL ENTERPRISES (QSE)

5.1 A Measured Entity with an annual Total Revenue of between R10 million and R50 million qualifies as a Qualifying Small Enterprise.

5.2 A QSE must comply with all of the elements of B-BBEE for the purposes of measurement.

5.3 Enhanced B-BBEE recognition level for QSE:

5.3.1A Qualifying Small Enterprise which is 100% Black owned qualifies for a Level One B-BBEE recognition.

5.3.2A QSE which is at least 51% Black owned qualifies for Level Two B-BBEE recognition level.

5.3.3A QSE is only required to obtain an sworn affidavit on an annual basis, confirming the following:

5.3.3.1 Annual Total Revenue of R50 million or less; and

5.3.3.2 Level of Black ownership

5.4 Any misrepresentation in terms of Para 5.3 above constitutes a criminal offence as set out in the B-BBEE Act as amended.

6. START-UP ENTERPRISES

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6.1 Start-up Enterprise must be measured as an Exempted Micro-Enterprise under this statement for the first year following their formation or incorporation. This provision applies regardless of the expected total revenue of the Start-up Enterprise.

6.2 Start-up Enterprise is deemed to have the qualifying B-BBEE Status In accordance with the principles of paragraph 4 of this Statement.

6.3 In order to qualify as a Start-up Enterprise, the enterprise must provide an independent confirmation of its status in accordance with paragraph 4.5.

6.4 Despite paragraph 6.1 and 6.2, a Start-up Enterprise must submit a QSE scorecard when tendering for any contract, or seeking any other economic activity covered by Section 10 of the Act, with a value higher than R10 million but less than R50 million. For contracts of R50 million or more they should submit the Generic scorecard. The preparation of such scorecards must use annualised data.

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