

Amended BBEE Construction Sector Code

Who does it apply to?

The Amended B-BBEE Construction Sector Code was gazetted on 01 December 2017 with immediate effect. Those who already have an Amended DTI Code certificate have 2 options available to them, viz:

- Continue with existing certificate until it expires, and then the Amended Construction Sector Code must be used, OR
- Have the existing certificate re-evaluated i.e the additional items on the Construction Code is verified for the same financial period and a revised certificate issued on the Amended Construction Sector Code. The existing expiry date of the certificate remains even though the issue date changes.

This Code goes to great length to describe those organisations that it applies to i.e those which derive >50% of annual revenue from Construction related activities. The key categories are:

- **Material Suppliers** – manufacturing, creation or supply of building material and equipment used in construction eg. cement, concrete, bricks, electrical equipment, steel, plant hire, plumbing, etc.
- **Built Environment Professional (BEP)** – planning, design and costing of construction projects eg. consulting engineers, architects, quantity surveyors, town planners, etc. Also includes project management and design of construction value chain including environment, energy, industrial, property, transport and infrastructure
- **Contractors** – conduct construction project activities including civil engineering, electrical engineering, power transmission, general building, specialist construction works eg. construction works, wiring, air-conditioning, heating, asphalt work, excavations, scaffolding and support, shop-fitting, structural steelwork, water-proofing, etc.

All such companies are required to submit their B-BBEE Certificates annually to the Construction Sector Council for tracking and monitoring purposes.

Exempt Micro Enterprises (EMEs)

Companies are classified into the EME category if they are either below R10m annual turnover bracket for Contractors/Material Suppliers / below R6m annual turnover for BEPs, or a start-up company in its first year of operations.

A discounting or enhancing effect applies to EMEs as per the table below, hence allowing for companies to influence their level as a competitive advantage. EMEs can choose to be assessed on the QSE scorecard as another option for possible enhancement. SANAS accredited rating agencies will be able to assess and produce a certificate with the adjusted ratings.

% Black ownership	Level	Recognition Status	Discounting ** (based on QSE s/card)	Enhancement (based on QSE s/card)
100%	1	135%	Reduce to Level 2 if skills expenditure on black people <0.6% of leviabale amount	N/A
≥51% -100%	2	125%	Reduce to Level 3 if skills expenditure on black people <0.6% of leviabale amount	Increase to Level 1 if full points achieved for Skills Development OR Supplier Development element
≥30% -51%	4	100%	Reduce to Level 5 if skills expenditure on black people <0.6% of leviabale amount	Increase to Level 3 or 2 if full points achieved for Skills Development and/or Supplier Development element
<30%	5	80%	Reduce to Level 6 if skills expenditure on black people <0.6% of leviabale amount	Increase to Level 4 or 3 if full points achieved for Skills Development and/or Supplier Development element

** Discounting does not apply to start-up companies or for small EMEs (i.e <R3m for Contractors/ Material Suppliers or R1.8m for BEPs). For the latter, an affidavit or CIPC certificate is required.

Qualifying Small Enterprises (QSEs)

Medium-sized companies are classified into the QSE category if they are in the R10-50m annual turnover bracket for Contractors/Material Suppliers or R6-25m annual turnover for BEPs. A discounting or enhancing effect applies to QSEs as per the table below, hence allowing for companies to influence their level as a competitive advantage. SANAS accredited rating agencies will be able to assess and produce a certificate with the adjusted ratings.

% Black ownership	Level	Recognition Status	Discounting	Enhancement
100%	1	135%	Reduce to Level 2 if skills expenditure on black people <0.6% of leviabale amount	N/A
≥51% - 100%	2	125%	Reduce to Level 3 if skills expenditure on black people <0.6% of leviabale amount	Increase to Level 1 if full points achieved for Skills Development OR PP&SD element
<51%	QSE Scorecard Points (see summary below)		N/A	N/A

QSE Scorecard – all elements assessed		
Elements	Points	Bonus
Ownership	27	3
Management Control	20	0
Skills Development	24	2
Preferential Procurement & Supplier Development (PP&SD)	29	0
Socio-Economic Development	5	0
Total	105	5

In general, companies need to be aware of the concept of “Priority elements” where 40% of the points for Ownership (net value) and Skills Development (excluding bonus points) or Preferential Procurement & Supplier Development (excluding bonus points) – each of the 3 broad categories. Should this not be met on any one of them, the certificate level will be discounted 1 level down from the level scored. Hence, the importance of tracking this aspect within the financial year to avoid disappointment at time of verification.

Joint Ventures (JVs)

Unincorporated joint ventures are common in the Construction industry, and are required to have a consolidated verification certificate based on the weighting of the joint venture parties, hence individual certificates or affidavits must be valid and meet the Amended Codes requirements. The points that are used for the calculation of the joint venture certificate scoring, and BEE level, are as follows:

- All Generic scorecard companies and <51% Black owned QSEs – points as per their individual scorecards,
- All EMEs and ≥51% Black-owned QSEs will have specific levels based either on their affidavit or verification certificate. Since these levels are not based on specific points, the following imputed points will be used:
 - Level 1 contributor – 105 points
 - Level 2 contributor – 97.5 points
 - Level 3 contributor – 92.5 points
 - Level 4 contributor – 85 points
 - Level 5 contributor – 77.5 points
 - Level 6 contributor – 72.5 points

Another important aspect of the JV certificates is the concept of Empowering Supplier. Should all the JV parties have Empowering Supplier status, the JV certificate will also reflect this. However, should the parties not all have this status, then this aspect will need to be assessed by the rating agency with each party contributing its relevant share of the requirements.

Generic Scorecards and Elements

The Generic Scorecard is split into different requirements for Contractors (including Material Suppliers) - >R50m annual turnover and BEPs - >R25m annual turnover:

Elements	Contractor		BEP	
	Points	Bonus	Points	Bonus
Ownership	27	4	27	4
Management Control	18	4	18	4
Skills Development	21	5	29	5
Preferential Procurement & Supplier Development (PP&SD)	34	4	27	3
Socio-Economic Development (SED)	5	1	5	1
Total	105	18	106	17

In general, companies need to be aware of the concept of “Priority elements” where 40% of the points for Ownership (net value), Skills Development (excluding bonus points) and Preferential Procurement & Supplier Development (excluding bonus points) – each of the 3 broad categories. Should this not be met on any one of them, the certificate level will be discounted 1 level down from the level scored. Hence, the importance of tracking this aspect within the financial year to avoid disappointment at time of verification.

The key differences in the elements are as follows:

Ownership:

- Stepped targets are in place for years 1-3, and then year 4 onwards where black ownership targets move from 32.5% to 35% and black women ownership from 10% to 14%.
- Bonus points are available for high levels of black ownership.
- For BEPs, >50% of shareholders must be professionally registered must be registered with a BEP professional council, and a member of the Executive Committee. Should this not be the case, only half of the black shareholders who do not meet these requirements be included in the ownership calculation.

Management Control:

- No Junior Management targets for BEPs.
- Points available for % professionally registered staff that are black.
- Bonus points are available for exceeding black Director targets and having black employees that meet the definition of “youth”.
- The reporting of Employment Equity returns to the Department of Labour is not a pre-requisite to earning points on this element.
- Racial demographics feature in the calculation of scores for Senior, Middle and Junior management points.

Skills Development:

- The annual submissions to the SETA by 30 April every year is a pre-requisite to earning any points on this element – a very important aspect to be adhered to.
- Stepped targets are in place for total Skills Development spend for immediate effect, and then at year 3, and then year 5 onwards. Additional points are then available based on how and to whom the spend was done eg. African people, black management and bursaries/scholarships.
- The Learning Programme Matrix has been adapted for the Construction industry, so important to pay attention to the descriptions. Learnerships now include Category A learners as well!
- The maximum period of recognition for a Professional Registration learnership is 5 years.
- 3 points available for an Approved and Verified Mentorship Programme, the specifics of which are clearly defined on pages 44-45 of the Codes.
- Informal training (Categories F & G) have a higher limitation of 35% (rather than 15% in the General Codes), allowing for more of this type of training to be recognised by construction companies.
- Mandatory training which cannot be included in the skills spend is specifically defined as the following, hence all other training can be claimed.
 - Site, project or safety inductions,
 - Toolbox talks,
 - Operators re-certification.
- The racial demographic calculation is relevant only on 1 sub-indicator, making it much easier to score on this element than the other Revised Codes.

Preferential Procurement & Supplier Development:

- The requirement for Empowering Supplier status is as per the Amended DTI Codes – blanket approval is being applied to every company at this stage. It is important to take note of the requirements as most aspects must be applied in the financial year.
- The points and targets for spend on $\geq 51\%$ black-owned suppliers are lower than other amended codes.
- Bonus points are available for spend on Black Designated Groups and enhanced spend on $\geq 51\%$ black women-owned suppliers.
- The 3 points for Black women-owned spend is on suppliers that are $\geq 35\%$, not $\geq 30\%$ as per other amended codes.
- The qualifying beneficiaries and requirements for the Supplier and Contractor Development Programmes are listed on pages 52-53 of the Codes.
- To optimise points, 20% of Supplier Development contributions should be to suppliers that are $\geq 51\%$ black women owned.
- Up to 75% of the points (versus 15% on the other amended Codes) can be attained on shorter payment terms with suppliers.
- Companies can earn Supplier Development points by funding the certification of their suppliers (see EME and QSE sections above) – this boosts your Procurement and Supplier Development points in the following ways – contact us to assist you with this initiative:
 - SMMEs and Black owned companies now have their best possible BEE level confirmed by a SANAS accredited verification agency, to use to develop their companies
 - Large companies increase their procurement spend by getting proper, optimised BEE certificates for their suppliers, and the spend with Xcelerate Verification Agency to conduct the work increases procurement scores even further due to our status as a Level 1 Empowering Supplier – EME, 100% black-owned and $>51\%$ black women owned.
 - The spend for EME verification is also used to score points under the Supplier Development element.

Socio-Economic Development:

- Extra points for 30% of the spend being on “Communities with Limited Service”, the definition of which is page 74 regarding access to water, electricity and household income.
- Bonus points for structured SED Projects, of which the required records are listed on page 62.
- Contributions benefitting black people with disabilities is increased by a factor of 1.25.

The total scoring falls within 1 of the ranges below, which then dictates the resultant BEE Level and Recognition Status.

BBBEE LEVEL	QUALIFICATION RANGES	BBBEE RECOGNITION STATUS
Level 1	≥100 points	135%
Level 2	≥95 points <100	125%
Level 3	≥90 points <95	110%
Level 4	≥80 points <90	100%
Level 5	≥75 points <80	80%
Level 6	≥70 points <75	60%
Level 7	≥55 points <70	50%
Level 8	≥40 points <55	10%
Non-compliant	<40	0%

The Amended Codes can be downloaded off our website www.xcelbee.co.za/downloads. As there are many specifics within the element scorecards and principles, it is important to understand the fine print. Xcelerate Verification Agency has many years of expertise in the Construction Industry, and can assist companies with training, tracking of scoring during the financial year, interim audits, EME/QSE supplier verifications, SANAS verification and certification, and advisory (to non-verification clients).

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