

THE CONSTRUCTION TRANSFORMATION CHARTER GROUP

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CONSTRUCTION SECTOR CHARTER

Circular No 1

Overview

The Construction Transformation Charter Group (CTCG) comprise of the following organisations:

1. ASAQS (The Association of South African Quantity Surveyors)
2. ABA (African Builders Association)
3. MBSA (Master Builders South Africa)
4. ECASA (Electrical Contractors Association)
5. NABCAT (National Association of Black Contractors and Allied Trades)
6. NAFBI (National Federation of the Building Industry)
7. SAACE (The South African Association of Consulting Engineers)
8. SABTACO (South African Black Technical and Allied Careers Organisation)
9. SAFCEC (South African Federation of Civil Engineering Contractors)
10. SAIA (South African Institute of Architects)
11. SAISC (South African Institute of Steel Construction)
12. SAWIC (South African Women In Construction)
13. Women for Housing
14. NUM (National Union of Mineworkers)
15. BCAWU (Building Construction and Allied Workers Union)
16. DPW (Department of Public Works)
17. SANRAL (South African National Roads Agency Limited)
18. DOT (Department of Transport)

CTCG recently concluded a two year process which has culminated in the creation of a sector transformation charter, endorsed and signed by the negotiating parties mentioned above as well as the Minister of Public Works.

Although the construction sector charter elements, weightings and targets have been agreed between all relevant parties, including the ministry responsible for the construction sector (Public Works), it will not become mandatory until formally gazetted by the Minister of Trade and Industry under Section 9 of the Broad Based Black Economic Empowerment Act no 53 of 2003. This is envisaged to take place by late this year or early next year.

In the interim there exists a high degree of uncertainty and confusion as to which methods and criteria for preference should be applied by organs of state and private clients in procuring within the construction sector.

Aligning the whole industry to a single and approved point system will allow service providers to properly and consistently target broad based black economic empowerment objectives in their organisational structures, strategies and policies and will eliminate confusion and duplication in the procurement process.

Hence, CTCG has resolved, as an interim measure until promulgation of the sector transformation charter under Section 9 of the BBBEE Act, and the promulgation of the revised regulations under the PPPFA no5 of 2000, to advise all organs of state and private sector clients involved in procurement within the construction industry and the built environment, to consistently apply the draft construction sector charter and its associated scorecard, as formally agreed within the sector, for purposes of measuring preferential points under the PPPFA

This Charter is already in use by a number of clients and it is envisaged that this circular will encourage its implementation throughout the industry by the end of September

This circular with attached annexure in conjunction with the scorecard will provide greater clarity regarding application. It has been scrutinized and supported by both National Treasury and the Construction Industry Development Board as being consistent with national objectives in respect of procurement preferences for historically disadvantaged persons.

The goal of the Charter is to ensure that the established consultants and contractors transform in an effective and genuine manner, but as and possibly more importantly the Charter's goal is to ensure that an environment is created where the small and medium sized consultants and contractors are able to grow and succeed.

The development and sustainability of our industry depends to a large extent on all its participants achieving some level of success - both large and small.

In our expanding economy there is a perception that only the bigger players are reaping the benefits. It is therefore important to highlight how our Charter caters for the development of small and micro consultants and contractors (SMEs). The following is a list of these benefits:

- Micro enterprises are not required to fill in a scorecard and small enterprises are required to fill in a foreshortened scorecard to limit the administrative burden.
- They have the opportunity to buy into established companies on either an individual or company basis to enable the established company to meet their ownership requirements.

- The opportunity exists for entities to invest into the SME because of the favourable status they enjoy in the construction industry (the ownership weighting and target is higher in the construction scorecard than in the DTI Generic scorecard).
- Established companies will have to make use of the Enterprise Development section of the Charter which creates opportunities for the SME to obtain assistance from an established consultant or contractor in all areas of his operations such as finance, budgeting, capital expenditure, general management, programming, tendering, health & safety, quality assurance, etc.
- The large established companies will be spending large amounts of money on CSI programmes such as building schools, community centres, etc, many of which will make use of the SME.
- All these benefits will provide the SME with the input he needs in order to climb his way up the CIDB register and thus enabling him to do larger and larger contracts.
- Procurement section of the charter will create the opportunity for the SME to participate in the empowerment of the very large supplier sector to the industry in general. The charter specifically promotes procurement from SME's and in addition the consultants and contactors will be demanding a favourable BEE contribution factor from the suppliers to enable them to score points in this area.
- A natural follow-on to the construction charter is the formation of Construction South Africa which is well underway. This organization will be an umbrella body looking after the interests of all the participants in the industry and in particular will encourage the large companies to play their role in helping the SME's. Matters of common interest to the industry such as CETA, CIDB, BUSA, NEPAD, ASGISA, etc will also be discussed in this forum.

Client bodies must therefore ensure that their procurement policies reflect the need for effective and real transformation in our industry by ensuring that their policies are consistent with the spirit of this Charter.

It is important to remember that this charter is not a regulatory document i.e. has no influence on the CIDB registers, SACPCMP, OHS, NHBRC regulations or any other compliance directives

Queries should be directed to and support can be obtained from the various industry organisations as listed above.

The following are attached as annexure:

1. Annexure 1.1: Implementation of the Charter
2. Annexure 1.2: Construction Charter Scorecard
3. Annexure 1.3: Legal Framework
4. Annexure 1.4: Negotiating Parties
5. Annexure 1.5: Scoring Methodology
6. Annexure 1.6: Explanatory Notes
7. Annexure 1.7: Letter to Suppliers

Annexure 1.1

IMPLEMENTATION OF THE CHARTER

INTRODUCTION

All major stakeholders in the construction sector developed a Broad Based Black Economic Empowerment Charter in line with the Broad Based Black Economic Empowerment Act 53 of 2003. Given the nature of the construction sector and the high frequency of interaction with specifically Government Departments as well as various private sector clients, it became necessary to issue a circular that will address and limit confusion during the early stages of implementation specifically relating to the procurement policies. Hence this circular is primarily aimed at:

All organs of state (including central government, provincial government, municipalities, public entities, public business enterprises, as well as all private sector clients operating within the built environment and PFMA Schedule II and III companies).

The circular will provide a general introduction to the scorecard and its application, explain time frames and illustrate how it fits into the procurement legislation.

TIME FRAME

This circular will be applicable from date of circulation until such time that the Construction Transformation Charter has been approved by Cabinet as a Code of Good Practice in terms of Section 9 of the Broad Based Black Economic Empowerment Act. This period will be referred to as the transitional phase.

BROAD BASED BLACK ECONOMIC EMPOWERMENT

BEE stands for Black Economic Empowerment. The correct term is however BBBEE which refers to Broad-Based Black Economic Empowerment. This forms part of government's overall strategy for South Africa's economic growth. It is defined as:

"an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities"

It is important to note that the term "*black people*" refers to natural persons who are Africans, Coloureds or Indians that are South African citizens. It is called Broad Based BEE because BEE no longer revolves solely around black ownership of companies. Although ownership still remains an important element it is now only one of 7 elements that a company needs to address in order to become BEE compliant. The Department of Trade and Industry provides

guidance on the required performance areas within the DTI Codes of Good Practice on Broad-Based Black Economic Empowerment, a document issued to establish the framework for broad based empowerment in South Africa.

Part of the requirements of a charter is the development of a scorecard. The purpose of the scorecard is to enable measurement of progress on all 7 elements or performance areas at company level.

THE FUNCTIONING OF THE SCORECARD

A scorecard is a mechanism through which the performance of companies could be measured. In this instance it is the performance related to broad based black economic empowerment. In general the scorecard will consist out of various key performance areas, referred to as elements. The transformation scorecard consist of seven main elements that all contribute to broad based empowerment. These elements include:

- Ownership;
- Control;
- Employment Equity;
- Skills Development;
- Preferential Procurement;
- Enterprise Development;
- Residual;

And are captured on an example scorecard below:

Criteria	Weighting	Target (%)	Actual Level (%)	Score Conversion	Score
Ownership	25	30	0	$0\%/25\%*25\%$	0
Control	10	40	10	$10\%/40\%*10$	2.5
Employment E.	10	40	30	$30\%/40\%*10$	7.5
Skills Dev.	15	1.5	1	$1\%/1.5\%*15$	10
Pref. Proc	20	70	56	$56\%/70\%*20$	16
Ent. Dev	15	5	2	$2\%/5\%*15$	6
CSI	5	0.25	0.25	$0.25\%/0.25\%*5$	5
Overall Score					47

By calculating the total score of a company generated from the companies own performance measured against the set targets, will determine the companies black economic empowerment classification. The sum of the scores for each element determines the company's BEE score or status. In the simple example above the company only attained a score of 47% out of a potential 100%.

This score above was calculated by adding the separate scores for each element of the scorecard together. In turn each one of the element's scores were determined by taking the actual percentage attained by an organization for that level and dividing that by the target for that specific element and then multiplying the answer with the weighting allocated to that specific element.

To ensure that all aspects related to a particular element are covered, scorecards expand each element to include indicators. For example employment equity is a key performance area in the scorecard yet we have to break it down into the various indicators captured under employment equity. In this example the element 'employment equity' will include the following indicators: senior management, middle management and junior management as well as measure the role of women in the various levels of management.

To make a scorecard work the elements and their indicators must be measurable. The scorecard therefore contains two measurement components namely weightings and targets associated with each indicator. The weighting points to the strategic importance of a specific element. In turn the element weighting must be broken down into the various indicators it consists of. Please see the following example

EXAMPLE: SCORECARD	
ELEMENT	WEIGHTING
OWNERSHIP	XX
CONTROL	XX
EMPLOYMENT EQUITY	10
SKILLS DEVELOPMENT	XX
PREFERENTIAL PROCURMENT	XX
ENTERPRISE DEVELOPMENT	XX
RESIDUAL	

(EXAMPLE) ELEMENT: EMPLOYMENT EQUITY	
INDICATOR	WEIGHTING
SENIOR MANAGEMENT	2
WOMEN IN SENIOR MANAGEMENT	1.5
MIDDLE MANAGEMENT	2
WOMEN IN MIDDLE MANAGEMENT	1.5
JUNIOR MANAGEMENT	2
WOMEN IN JUNIOR MANAGEMENT	1

The employment equity example illustrates the element weighting in the scorecard namely 10, as well as the various weightings of each indicator within employment equity. The weightings attributed to each indicator add up to the element weighting.

Over and above providing a weighting, a target must be set for each indicator. The target and the weighting work together to provide a score for a company (please see the following example).

EXAMPLE:				
INDICATOR	COMPANY PERFORMANCE	TARGET	WEIGHT	SCORE
SENIOR MANAGEMENT	15%	40%	2	$(15/40)*2= 0.75$
WOMEN IN SENIOR MANAGEMENT	8%	16%	1.5	$(8/16)*1= 0.5$
MIDDLE MANAGEMENT	30%	40%	2	$(30/40)*2= 1.5$
WOMEN IN MIDDLE MANAGEMENT	10%	16%	1.5	$(10/16)*1= 0.63$
JUNIOR MANAGEMENT	60%	65%	2	$(60/65)*2= 1.85$
WOMEN IN JUNIOR MANAGMENT	25%	27%	1	$(25/27)*1= 0.93$
TOTAL SCORE FOR EMPLOYMENT EQUITY				6.16

Therefore, by setting a target for each indicator companies must aim for that level of performance to score as much points as possible. Should a company not perform adequately in comparison to the target, that company will score very little points. The performance against the target will determine how many points out of the allocated weighting a company will score. The weighting will determine how many potential points a company can score on a specific indicator related to the other indicators in the scorecard.

The score attained by a company will determine its level of BEE compliance as illustrated in the matrix below:

BBBEE Compliance	Qualification	Weighting Recognition
1	≥ 100 points (or percentage relevant to small)	135%
2	≥ 85 but < 100	125%
3	≥ 75 but < 85	110%
4	≥ 65 but < 75 or any micro enterprises	100%
5	≥ 55 but < 65	80%
6	≥ 45 but < 55	60%
7	≥ 40 but < 45	50%
8	≥ 30 but < 40	10%
9	< 30	0%

EVALUATION OF A SCORE

The matrix above attributes a BEE compliance level to a company depending on its score within the parameters set in column 2. The 'Weighting Recognition' is applicable to private sector procurement. When a first tier supplier compiles its scorecard it can score under the procurement element, based on its level of BEE procurement. The weighting recognition either rewards the first tier supplier by inflating every rand of normal spend on a level 1 supplier to R1.35 BEE spend, or penalize the first tier supplier through diminished recognition of BEE procurement the lower the level of BEE compliance of the supplier.

In terms of public sector procurement legislative requirements dictate that a company can tender for a job and based on the 90/10 and 80/20 principle such a tender must be evaluated and awarded accordingly. Appendix A deals with the background and proposal as articulated by the Construction Charter Council to ensure that Organs of State can incorporate broad based empowerment scoring into the evaluation of tenders and remain within the requirements of the PPPFA.

In essence an organ of state is required to request a score from the supplier of a construction service including related professional services as defined in the charter document based on the scorecard captured in the Construction Charter. The score attained by a company (Appendix A.2) will be used to determine the preferencing points, which in combination with price and functionality points will determine the winning bid. The simple example below illustrates the principle with Bidder Y as the winning bid (example below):

	Bidder X	Bidder Y	Bidder Z
Tender Price	R100	R105	R110
Scorecard Score	0	65	80
Price Points	80 (Ps = 80(1-(Pt-Pmin)/Pmin))	76	72
Preference Points	0	0.65*20=13	16
Total	80	89	88
Winner		Bidder Y	

A BBBEE score in terms of the Construction Charter for an enterprise can either be done through a verification agency that is part of the official industry body called ABVA, or an enterprise can use an accountant, auditor or do a self assessment. A particular client's bid evaluation committee as contemplated in Annexure 1.3 paragraph 15, can require an independent ad hoc verification of submitted scores. This will be at the cost of the client.

For evaluation purposes a client may only utilise the total score of an enterprise, as it represents the level of compliance with the requirements of Broad Based Empowerment as stipulated by National Government. No preferencing within the context of the scorecard or identified groupings within the definition of 'black people' will be allowed.

APPLICATION TO SMALL AND MICRO

The Charter Council recognises the importance of cultivating entrepreneurship and stimulating activity amongst smaller enterprises. Small and micro are defined per the size table under definitions in the charter. With this in mind it acknowledges the fact that the charter will provide small and micro enterprises with significant compliance challenges. Hence this circular makes the following allowance in addition to the exemption of micro sized enterprises including its recognition as superior contributors to BEE and the selective scoring out of 70 for small enterprises as indicated in clause 4.12 of the Construction Charter:

- In the event of 'Board' and 'Executive Management' being the same people, the small enterprise can fill in the same score for both indicators, hence count the same people at both levels;
- In employment equity a small enterprise within contracting can also measure itself against the one band of management as applicable to the built environment professionals. This level of management will include any management that is not 'Executive Management' and includes supervisors, foremen and superintendents that makes routine and process decisions. This caters for the small enterprise that does not have a hierarchy of management. The targets applicable to the BEP's as stipulated in the Construction Charter Scorecard will apply.

PRACTICE NOTES

To clarify aspects relating to the application of the charter several practice notes have been developed. These practice notes provides practical advice relating to operational matters of the charter, and is by no means an addition of new concepts not already covered in the main body of the charter. These practise notes applies to the charter and are not only applicable during the transitional phase. Please see these practice notes in Annexure 1.6.

CONCLUSION

Broad Based Empowerment can only be promoted effectively if all stakeholders work together. In this regard this circular is a supplement to the main construction charter to provide greater clarity as well as guidance on measurement related aspects. The circular is applicable during the transitional phase.

Through this circular, with the endorsement of Treasury and CIDB, the Charter Council request all client bodies to subscribe to the broad based measurement of the transformation efforts of enterprises in the construction sector (as defined in the charter) as well as acknowledge the efforts of the stakeholders in the sector by agreeing to accepting and using the BEE score of enterprises (as per the construction charter) to evaluate preferencing in tenders in accordance with Annexure 1.3.

Annexure 1.2

CONSTRUCTION SCORECARD

The construction sector scorecard is shown below. There are differences between the contracting and built environment professional (BEP) in terms of some of the targets and weightings. This scorecard must be read in conjunction with the charter section 7 on the scorecard.

ELEMENT	DESCRIPTION	WEIGHTING	TARGET 4/7 YEAR*	BEP
OWNERSHIP		25		
Voting rights	Voting rights in the hands of black people	4	30	
	Voting rights in the hands of black women	2	10	
Economic interest	Economic interest to which black people are entitled	5	30	
	Economic interest to which black women are entitled	2	10	
	Economic interest to which black broad based and or black designated groups, specifically employees, are entitled	5	10	Target 5
Realisation points	Ownership fulfilment	1	No restrictions	
	Net equity value (In accordance with code 100 of DTI Code of Good Practice)	6	30	
CONTROL		10		
Board	Members of the board who are black people as % of board	3.5	40	
	Members of the board who are black women as % of board	1.5	20	
Executive Management	Executive Management who are black people as % of Executive Management	3.5	25/40	
	Executive Management who are black women as % of Executive Management	1.5	10/16	
EMPLOYMENT EQUITY		10		
Senior Management	Black Senior Management as % of total senior management	2	25/40	
	Black women in Senior Management as % of total senior management	1.5	10/16	
Middle Management	Black middle management as % of total mid management	2	30/40	
	Black women in middle management as % of total mid management	1.5	12/16	
Junior Management	Black junior management as % of total junior management	2	65	
	Black women in junior management as % of total junior management	1	27	
BEPs – All Management	Black people at all management levels	6	30/40	
	Black women at all management levels	4	12/16	

SKILLS DEVELOPMENT		15		20
Training costs	Direct training cost as a % of payroll	2	1.5	
	% of above on black people	2	70	
	% of spend on black people spent on black women	1	25	
	% of spend on black people spent on black management	1	25	
	% of spend on black management spent on black women management	0.5	20	
Learnerships	Learnerships as a % of employees	1	2.5	Target 1.5
	Black learnership positions as % of total learnerships	1.5	70	
	Black women learnership positions as % of black learnerships	1	35	
	Learnerships for designated groups as % of black learnerships	1	30	
Bursaries	Bursary expenditure on black students, as % of payroll	2	0.3	
Mentorship	Implementation of an approved and verified mentorship programme	2	Yes	
PROCUREMENT		20		
	Total procurement on BBBEE-accredited companies (measured as per the table in the charter) as a % of procurement		70	
ENTERPRISE DEVELOPMENT		15		10
	Input	5 (5)	Yes/No	
	Total Turnover Ratio	5 (2.5)	5	
	Output	5 (2.5)	Annual GDP Growth	
RESIDUAL		5		
	CSI as a percentage of payroll		0.25%	

**4 Year target are applicable up to 31/12/2010, thereafter the targets revert to seven year targets*

Annexure 1.3

LEGAL FRAMEWORK

- 1.1 Public procurements within the Republic of South Africa grant preference to historically disadvantaged (black) persons under the provisions of the Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA);
- 1.2 The Broad Based Black Economic Empowerment Act No 53 of 2003 was approved by Parliament with the purpose of assigning such preference broadly to disadvantaged (black) persons. This revised approach to BEE contrasts with the previously narrow based approach to procurement preference which has not achieved the aspirations of the general voting public nor the objectives of Parliament and the national executive;
- 1.3 The Construction Sector Charter Council was established in terms of the BBBEE Act to represent the consolidated stakeholders of the construction industry and the built environment;
- 1.4 The Construction Sector Charter Council supports and seeks to promote the objectives of the BBBEE Act;
- 1.5 The Charter Council has noted the pressing national need to move rapidly from narrow based to broad based BEE procurement;
- 1.6 The Charter Council has further noted the significantly disparate procurement policies and procedures adopted by different organs of state;
- 1.7 The Charter Council has observed the continued widespread focus on narrow based BEE procurement, in conflict with the objectives of the Broad Based Black Economic Empowerment Act;
- 1.8 The Charter Council has observed widespread confusion amongst construction and professional service providers as to which BEE objectives, elements, weightings and targets they should strive towards;
- 1.9 The Charter Council has studied the broad based principles and objectives contained in the draft BBBEE codes of good practice;
- 1.10 The Charter Council has researched and debated the transformation, growth and other needs of the construction industry and the built environment;
- 1.11 The Charter Council has reached consensus as to BEE objectives, elements, weightings and targets between all identified construction sector stakeholders;
- 1.12 The Charter Council has agreed a construction sector scorecard and charter and recommended these to the Minister of Trade and Industries;
- 1.13 The Charter Council has applied for gazetting of the Construction Sector Charter under Section 9 of the BBBEE Act;
- 1.14 Gazetting under Section 9 of the Act will make the Construction Sector Charter mandatory and all organs of state will be compelled to use it in public procurements;
- 1.15 The Charter Council desires to bring speedy alignment, order and consistency within construction sector procurement;
- 1.16 The Charter Council desires that all construction and professional service providers within the construction sector and built environment may, with confidence, consistency and at the earliest possible stage, plan and align their corporate strategies, structures, policies and operating procedures to accord with the objectives of the BBBEE Act and the draft Construction Sector Charter

- 1.17 The Charter Council now issues this advisory note dealing with transitional arrangements for broad based black economic empowerment within the construction industry.

SIGNATORIES

2. Negotiating parties that are signatories to the Construction Sector Charter are listed in Annexure 1.4.

SUPPORT

3. This Advisory note has been scrutinized and is supported by both the National Treasury and the Construction Industry Development Board [CIDB] as being consistent with national objectives in respect of procurement preferences for historically disadvantaged persons.

BACKGROUND

4. Supply chain management within the national and provincial spheres of government is regulated by the Public Finance Management Act (Act 1 of 1999). Within the municipal sphere supply chain management is regulated by the Local Government: Municipal Finance Management Act (Act 56 of 2003). In its turn, procurement preference is regulated under the Preferential Procurement Policy Framework Act (No 5 of 2000) as well as the Broad Based Black Economic Empowerment Act (No 53 of 2003). National government intends amending the Preferential Procurement Regulations of 10 August 2001 to properly align these two enactments. The amended regulations are pending, but not yet finalized.
5. The Preferential Procurement Policy Framework Act requires each organ of state to determine its own procurement policy and to implement the policy within the framework of the PPPFA. The Broad Based Black Economic Empowerment Act provides for the promulgation of both generic and sector-specific codes of good practice which will be binding on organs of state. In the absence of a sector-specific transformation charter the generic codes will apply. Once a sector-specific code and scorecard has been approved and gazetted, the sector code will be mandatory and organs of state will be compelled to use it in the procurement of construction and associated professional services. The structure of the BBEE Act is such that private sector entities will, in order to secure charter points and favourable BBEE ratings, also be compelled to comply with the requirements Construction Sector Charter and its associated scorecard in dealing with one another once the Construction Charter has been gazetted.
6. The generic codes are far advanced and will be promulgated during 2006. A draft code has been developed for the construction sector and mutually agreed by the parties listed in Appendix 1. The draft construction sector charter, elements, weightings and targets have been submitted to the Minister of Trade and Industry for final approval and gazetting under Section 9 of the Act. Gazetting is expected towards the end of 2006.

DILEMMA

7. Although the draft construction sector charter, elements, weightings and targets have been agreed between all relevant parties, including the ministry responsible for the construction sector (Minister of Public Works), these will not become mandatory until formally gazetted by the Minister of Trade and Industry under Section 9 of the Act.
8. Public and private clients procure approximately R60 billion of construction and associated professional services per annum from the construction sector using a wide range of procurement policies, procedures and methods. These include client-specific scorecards, the draft generic scorecard, and the draft, but agreed, construction sector scorecard.
9. In the interim, there exists a high degree of uncertainty and confusion as to which methods and criteria for preference should be applied by organs of state and private clients in procuring within the construction sector.
10. It is important that clear direction be given and that the construction industry is aligned towards the long term objectives of the BBBEE Act at an early stage.
11. Aligning the whole industry to a single approved point system will allow service providers to properly and consistently target broad based black economic empowerment objectives in their organizational structures, strategies, and policies and will eliminate confusion and duplication in procurement processes.

PROPOSAL OF THE CHARTER COUNCIL

12. The Charter Council has resolved, as an interim measure until promulgation of the sector transformation charter under Section 9 of the BBBEE Act, and the promulgation of revised regulations under the PPPFA, to advise all organs of state and private sector clients involved in procurement within the construction industry and the built environment, to consistently apply the draft construction sector charter and its associated scorecard, as formally agreed within the sector, for purposes of measuring broad based black economic empowerment under the PPPFA.

LEGAL MECHANISM

13. The PPPFA Regulations R725 of 10 August 2001 in regulations 3(2) and 4(2) provide for procurement preference to be awarded for “*being an HDI and/or subcontracting with an HDI and/or achieving any of the specified goals stipulated in regulation 17*”. In its turn, Regulation 17(4) refers to the realization of specific goals of the RDP, which must be measurable and quantifiable. Under regulation 17, organs of state must monitor the execution of each contract for the achievement of such goals.
14. It is now proposed that organs of state and private clients, in procurements within the construction sector, assign all procurement preference points (10 or 20 depending on the preference system specified) to the achievement of the goals of the RDP under regulation 17, and that the achievement of charter targets be recognized as the proper achievement of RDP goals.
15. It is further proposed that, until accredited rating agencies are in place to properly validate BBBEE status, such status be established by bid evaluation committees in terms of regulations 12(2), 12(3) and 15(1) of the PPPFA regulations, which provide as follows:
 - 12 (2) Only a tenderer who has completed and signed the declaration part of the tender documentation may be considered for preference points.*
 - 12(3) An organ of state may, before a tender is adjudicated or at any time, require a tenderer to substantiate claims it has made with regard to preference.*
 - 15(1) An organ of state must, upon detecting that a preference in terms of the Act and these regulations has been obtained on a fraudulent basis, or any specified goals are not attained in the performance of the contract, act against the person awarded the contract.*
16. Organs of state should thus adopt, as part of their preferential procurement policies, that bidding entities within the construction sector should be required to certify their BBBEE status under the draft charter by affidavit, subject to subsequent audit and penalty as prescribed by the PPPFA Regulations.
17. Organs of state must also in their tender documents indicate that construction related tenders will be evaluated on the basis of the draft construction sector charter and its associated elements, weightings and targets.

CONCLUSION

18. Should organs of state and private clients adopt the approach set out in this advisory note, it will align the construction sector to a single approved preferential point system and achieve the objectives of the national legislature and executive.

ANNEXURE 1.4

NEGOTIATING PARTIES

1. ASAQS (The Association of South African Quantity Surveyors)
2. ABA (African Builders Association)
3. MBSA (Master Builders South Africa)
4. ECASA (Electrical Contractors Association)
5. NABCAT (National Association of Black Contractors and Allied Trades)
6. NAFBI (National Federation of the Building Industry)
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8. SABTACO (South African Black Technical and Allied Careers Organisation)
9. SAFCEC (South African Federation of Civil Engineering Contractors)
10. SAIA (South African Institute of Architects)
11. SAISC (South African Institute of Steel Construction)
12. SAWIC (South African Women in Construction)
13. Women for Housing
14. NUM
15. BCAWU
16. National Department of Public Works (Leading Department)
17. South African National Roads Agency Limited (SANRAL)
18. Department of Transport (DOT)

Annexure 1.5

SCORING METHODOLOGY

An enterprise may calculate its BEE compliance level:

- In accordance with the construction charter scorecard, or;
- On the basis of measuring only the ownership and control elements, in which case the formula that must be used: $A = B * 1.92$, where
 - A = The Indicative BEE score during the Transitional Phase;
 - B = The total score achieved in respect of Ownership and Control on the Construction Charter Scorecard.

An enterprise can use its own discretion as to which method it wants to follow to obtain a BEE score. For the purpose of measurement the reporting period used to calculate any score will be up to 30 June 2006, or for any full twelve month period at any time thereafter. Ownership, control and employment equity will be evaluated as on the last day of the 12 month period. All other elements must be evaluated over the 12 month period. This process is legally allowed in the transitional period, the CTCG prefers that the scorecard method is set up and used from the beginning of this process in view of the work done to date.

Annexure 1.6

CONSTRUCTION CHARTER PRACTICE NOTES

1. Joint Ventures

In respect of an unincorporated joint venture, being a joint venture between two or more measured entities, which is not constituted in the form of an incorporated juristic person, a consolidated verification certificate must be submitted. A consolidated verification certificate will consolidate compliance data in respect of all the elements in the construction scorecard of the parties entering into an unincorporated joint venture on a single verification certificate as if those measured entities were a single measured entity.

The consolidation of compliance data shall be based on a weighting in accordance with the shareholder agreement relevant to the specific joint venture. Hence should two companies enter into an unincorporated joint venture their respective scores in terms of the construction charter will be weighed according to their level of shareholding in the joint venture and added together for a combined score out of 100.

Should a company qualify as 'small' its BEE compliance level (a percentage out of 100) must be used to calculate the consolidated score, and not the small companies direct score out of 70.

2. Foreign Companies

In accordance with clause 5.1.5 of the charter document a local multinational restricted through a global policy to accommodate local (South African) ownership, will be entitled to apply, in writing, to the Ministers of Public Works and Trade and Industry to qualify for equity equivalents. Code 100, Statement 103 of the DTI Generic Codes indicates that the content of equity equivalents approved in accordance with a Sector Code will be dealt with in the sector code. Hence the following is important to note with regards to foreign companies:

1. A global policy means a globally uniform applied restriction upon the alienation of equity in or the sale of businesses of the Multinational Affiliates of a Multinational Business imposed by the Multinational Business or by a regulator which has lawful jurisdiction over that Multinational Business or by any law of application to the Multinational Business. Where the Global Policy is imposed by a regulator or by law, such Global Policy must substantially have been in existence prior to the date of promulgation of the BBBEE Act 53 of 2003.

2. All other definitions as indicated in Code 100, Statement 103 will be applicable except for Equity Equivalent.
3. Equity Equivalent in terms of the construction charter relates to equivalency points scored on other elements of the scorecard to enable the local multinational to compete even though it might be restricted by global policy to score on ownership. It does not relate to monetary contributions outside of the requirements set under corporate social investment.
4. The 25 points under ownership will migrate as follows:
 - a. 10 Points to Control, pro rata apportioned in accordance with current weightings applicable;
 - b. 8 Points to Employment Equity, pro rata apportioned in accordance with current weightings applicable;
 - c. 7 Points to Skills Development, pro rata apportioned in accordance with current weightings applicable;
5. All other elements remain the same in terms of scoring.

3. NEW ENTRANTS

It is quite possible that new companies will be entering the construction sector over the period of the charter. This in itself provides a challenge due to the fact that these companies have no portfolio of proof and can only report on elements related to the way the enterprise is constituted in terms of ownership and employment related matters. Hence the following calculation can be used to calculate a new entrant's BEE score at the date of entering the market. This score will be applicable during the first year of activity, during which the enterprise will have to build a portfolio of proof as required by the size category it operates in.

Calculation: $A = B * 1.92$, where:

- o A = The indicative BEE score of the new entrant;
- o B = The total combined score of the new entrant on Ownership and Control.

The scoring above will be used for foreign companies entering the market that are not bound by a global policy placing limitations on the alienation of equity. A new entrant that is also a foreign entity bound by a global policy will be subjected to the scoring as prescribed under section 2 on Foreign Companies. Such a foreign entity will not be in a position to score on the portfolio of proof elements over a 12 month period. Though it will result in low scoring it will not prevent foreign companies from tendering. It will however promote joint ventures with South African companies and/or competitive pricing from foreign entities. It will also not debilitate a process where such a foreign entity is needed for a specialist job where no such capacity exists in South Africa.

Enterprise Development: Practice Note1 Rev1

A. Definitions:

1. Enterprise Development (ED)

This is the development of black owned enterprises (i.e. 50% plus one share) through investment, mentoring, skills development, systems transfer.

2. Established Organization (EO)

This is the organization that is doing the developing and will be claiming the benefit in its charter scorecard in its' economic sector/sub-sector.

3. Developing Organization (DO)

This is the organization that is receiving the mentorship, direction and assistance from the EO and shall be black owned and/or engendered enterprise.

4. Enterprise Development Programme (EDPr)

This is the development programme that the EO designs in consultation with its DO's to develop organizations against which its scorecard points will be measured in terms of its progress against the plan.

5. Enterprise Development Plan (EDP)

This is the development plan that the EO and an individual DO develop in consultation and is particular to the specific relationship. The EDPr must be used as a broad framework to develop the EDP.

An organization can be both an EO and DO at the same time i.e. being developed and doing development simultaneously.

B. Categories

The focus on ED should be on the development of entities in the construction sector.

Enterprise development can be separated into four categories viz:

Category 1: Suppliers – suppliers of construction equipment, construction materials, hired plant/machinery and formwork and the like eg. stationary, cleaning materials, electronic equipment etc.

- Category 2: Professional service providers – auditing and financial service providers, legal services, services in the built environment professionals (architects, environmental consultants, engineering consultants, quantity surveyors, town planners, land surveyors, geologists, material testing laboratories) and other specialist consultants etc.
- Category 3: Built environment service providers – contractors, (building, interior decorators, painting, civil, mechanical, electrical, electronic) specialist sub contractors. (Geotech, piling, asphalt, landscaping, fencing, road marking)
- Category 4: A special category is necessary for SOE's, provincial and local government for the PPP's. Outsourcing and possible privatization of certain functions that are still being done within the established or parent organization such as: internal bus transport services, internal construction and maintenance units. This category has a short-term duration.

C. **Enterprise Development Guidelines**

The enterprise development programme must adhere to the following guidelines:

- ED is focused on, but not limited, to small, medium and micro enterprises as defined in the National Small Business Act (No. 102 of 1996) as applicable to the construction industry.
- The focus will be in the development of enterprises that have the potential to develop.
- A relationship agreement of co-operation and assistance has to be in place between the established organization (EO) and developing organisation (DO). The duration of this agreement is to be beyond the project by project basis, until the milestones detailed in the development plan has been achieved.
- Joint venture partnership between an EO and DO does not merely by their existence obtain recognition as enterprise development. The development programme utilized must meet the approved criteria as listed under section F.
- Financial assistance given to a developing enterprise that is not matched with a development programme does not constitute enterprise development.
- The focus of enterprise development will be on long term sustainability. Enterprises participating in development programmes need to be allowed to work in different geographical areas to facilitate business growth through continuous work flow. Industry and government will work together to get co-

operation from communities in this regard, provided that maximum use is made of locally available resources that are competitive.

- EO equity into DO to be 20% maximum, whether direct or via subsidiaries or associated companies. This equity must be disposed off by the EO as per the exit strategy as agreed to in the development programme and/or the relationship agreement. This option is not compulsory but should this equity option be exercised safeguards need to be built into the relationship agreement in order to avoid dominance by the EO via its shareholding over the DO. The objective of the EO is to safeguard its monetary investment rather than dominate the management decision making and day-to-day affairs of the DO. The EO may guide and influence the management of the DO.
- For BEP's to start a new enterprise certain legal and statutory requirements have to be met. Assistance to fulfil these requirements are not to be used in the ED.
- A process of identification for compatibility EO and DO must be followed. This is to establish a platform for a smooth working relationships/partnerships between the respective organizations.

D. **Identification of EO and DO Enterprises**

The developing organization that can qualify for the ED must:

- be a legally registered entity compliant with all the necessary regulations etc.
- be employers of at least three other permanently employed personnel and not merely a one person operation with temporary employees.
- be a genuine entity with employees and shareholders and have a need to be empowered (not window dressing or front companies).
- Give preference to person/s and entities that have experience and/or, prior training in the built environment industry and women.

The established organization that can qualify must:

- have a track record of good corporate governance, business ethics, professionalism and a sense of concern regarding work related safety issues and environmental issues.

E. **Measurement in the Scorecard**

This is to be broken up into two components:

1. Determination of enterprises development compliance
2. Measurement of development and computing this measure of progress into a scorecard score.

1. **Development Compliance**

1. Auditors will ensure that the development plan complies with at least 8 criteria.
2. Auditors will review the enterprise development documentation
3. Auditors will interview the DO owner and selected staff to gauge benefits provided and actual development attained by the DO.
4. Auditors to split the turnover generated from EO assistance and from DO own efforts.

During the period of self assessment a company must ensure that it compiles a proper portfolio of proof to substantiate claims.

2. **Measurement**

1. When the above 4 steps are achieved then the auditor can deem that positive enterprise development has been attained and that the development programme is compliant.
2. The equation/formula in order to convert this achievement into a score for the scorecard purposes, is as follows:

INDICATOR	DESCRIPTION	WEIGHTINGS	TARGETS
6	ENTERPRISE DEVELOPMENT	(10) 15	
6.1	Development Compliance	5	The criteria listed in section F of this document. This is informed by an independent audit.
6.2	Turnover Ratio	(2.5) 5	Total DO annual turnover divided by total EO annual turnover. The target is 5% of EO turnover.
6.3	Outputs by developing organizations (DO)	(2.5) 5	Measured in terms of the measurement matrix. The target is annual average GDP growth rate as the minimum threshold.

() BEP's Weightings

MEASUREMENT MATRIX FOR DEVELOPING ORGANISATIONS

ITEM	CRITERIA	PREVIOUS YEAR	CURRENT YEAR	WEIGHTING	SCORE
A.	FINANCIAL				
1.	Annual turnover			(.625) 1.25	
2.	Growth in cost of employment excluding average annual increases			(.625) 1.25	
3.	Total Value of Assets			(.625) 1.25	
B.	REGULATORY				
4.	Tax & other regulatory compliance			(.375) 0.75	
C.	OTHER				
5.	Improvement in credit ratings			(.25) 0.5	
TOTAL				(2.5) 5	

() BEP's Weightings

In the case where there are more than one DO qualifying on the EDPr of a single EO, the results of the measurement matrices must be weighted in accordance with the turnover figures of the DO's.

F. **Criteria for Compliance**

For the enterprise development programme to be compliant, it must include the following components:

1. Management and labour skills transfer
2. Establishment of administrative systems
3. Establishment of cost control systems
4. Planning, tendering and programming skills transfer
5. Business skills transfer with emphasis on entrepreneurial and negotiation skills
6. Technical skills transfer with emphasis on innovation
7. Legal compliance skills transfer
8. Procurement skills transfer
9. Establish credit rating/history
10. Establish financial loan capacity/history
11. Contractual knowledge transfer.
12. A champion for enterprise development (further defined below)

The information collected from the above will form the framework of the portfolio of evidence.

Furthermore, the programme must address the following development issues:

- An accountable and responsible person from at least senior management level from the EO must be identified as the enterprise development programme champion. This individual must be suitable qualified, experienced and empowered to undertake the required actions for enterprise development. This person must have mentorship ability and experience.
- The aim of the enterprise development programme is to develop the emerging enterprise to an eventual point of independence. This must be included in the structure of the development plan which must track progression through various set milestones as per the development plan.

Mentoring Practice Note 1 Rev 1
(As contained in Skills Development)

It is suggested that a company's mentor program must comply with approved generic criteria. The criteria are explained below.

The purpose for mentoring is as follows: To support and enhance career path development towards management and senior technical positions.

Measurement of Mentoring in the Scorecard

The company auditors will undertake the following activities on an annual basis:

1. Compare the company mentor program with the provided list of criteria. If the program complies with the list of requirements, it will qualify for recognition in the score card.
2. The auditor will evaluate the portfolio of evidence for the protégés against the list provided.
3. The auditor will randomly select a few protégés to interview to determine the effectiveness of the program.
4. The auditor will then sign off that the mentor program is compliant.

A simple yes or no answer will qualify the company for points in the scorecard for mentoring.

Target Group to qualify for mentoring

All individuals (There is no set bias in the mentoring as companies will naturally gravitate toward developing designated groups in order to comply with employment equity requirements).

Criteria for compliant internal mentor program

The size of the program will be relevant to the size of the company implementing the mentoring; however, the following criteria must be present in all companies.

- Each company must have one person in the company who is responsible and accountable for mentoring, called the mentor champion. In a larger company, this may be the chairman of a committee set up to manage a mentor program.
- Other criteria for the program include the following:
 1. The objectives and desired outcomes of the program
 2. The structure of the program
 3. The resources required and how they will be allocated

4. Methods on how the protégés and mentors will be selected and matched
5. The training for the mentors and protégés on their responsibilities toward the mentor relationship, which may include communication skills and conflict handling
6. The training necessary to support the mentoring
7. The time frames for the implementation of the program

List of documents to be included in the portfolio of evidence

A portfolio of evidence must be provided for each protégé as well as an overall portfolio for the program where more than 5 protégés are participating.

General portfolio of evidence to include the following:

- Monthly report to mentor champion on overall program (Internal progress review)
- CV of mentor champion
- Minutes of mentor committee meetings
- Plan of mentor program as indicated above

Individual portfolio of evidence for each protégé to include the following:

- Minutes of meetings between protégés and their mentors including details of time, location and duration of meetings, topics discussed advice and guidance given and progress review on required development outcomes.
- Any training provided to support protégé development
- Attendance at mentor and protégé training for the program
- Individual development plan
- Development interventions
- Quarterly report on protégé benefits from mentor relationship
- Individual progress review on a quarterly basis against individual development plan

Activities undertaken by protégé including which departments the protégé worked in, details of job assignments and details of activities undertaken.

Annexure 1.7

OFFICIAL NOTICE: ALL SUPPLIERS TO THE CONSTRUCTION SECTOR

The construction sector is in the process of finalising a Sector Transformation Charter in accordance with the objectives of the Broad Based Black Economic Empowerment Act no53 of 2003. A copy of the charter is available from all industry associations related to civil and building contracting as well as consulting engineers, quantity surveyors and architects.

In the Department of Trade and Industry (DTI) Codes of Good Practice as well as in the Construction Transformation Charter a scorecard is used to calculate compliance with the objectives of broad based empowerment. One of the critical elements contained is 'Procurement'. A construction service provider or first tier supplier that would like to score a potential of 20 out of a 100 on the scorecard is forced to track the BEE compliance level of its suppliers (second tier supplier).

Please note that in accordance with the stipulations of the DTI's Codes of Good Practice, a first tier supplier can not force the requirements of its sectoral charter on a second tier supplier that is not within that sector. Hence the only information the first tier supplier would like to obtain is its suppliers BEE score out of 100 in terms of either the DTI Codes of Good Practice or a specific sectoral charter if applicable.

In the absence of sufficient verification capacity it is acceptable that suppliers do a self verification up to contracts of R1 million. For all contracts larger than R1 million a supplier's submitted score must be audited. A supplier can calculate its score based on the methodology prescribed in Code 000, Statement 000, clause 10:

*"During the Transitional Period...an enterprise may calculate its BEE compliance in accordance with the Generic Scorecard or on the basis of measuring only ownership and management/control elements in which case the formula to be used: $A = B * 1.92$; where A is the BEE status during the transitional phase and B is the total achieved score in respect of Code 100 and Code 200".*

The DTI Codes of Good Practice can be obtained from www.thedti.gov.za under the button BEE. Phase 1 refers to code 100 and 200 and Phase 2 relates to Codes 300 to 700 and the Qualifying Small Enterprise (Code 1000 to 1700). Please take note that there is a special dispensation for small and micro enterprises in both the DTI Codes and the Construction Charter.

The construction sector is committed to transformation and will require the information stipulated above from all of its suppliers. This is aligned with other sectoral charter initiatives as well as the DTI Codes. Please take note that you will put yourself at a distinct disadvantage as supplier to the sector if you do not comply with the requirements.