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The Impact of the New Construction Sector Codes on QSE's and EME's



How does the new Construction Charter really impact QSEs and EMEs?

This week we look in much more detail into the the new Construction Charter (dated 01 December 2017) published in the *Government Gazette* on 8 December 2017 and became effective on that date for all entities operating within the Construction Industry.

In terms of the new *Construction Charter*–

- o an **EME (Exempted Micro Enterprise)** is classified as an enterprise with an annual turnover of less than R10 million for Contractors and R6 million for BEPs (Built Environment Professionals); and
- o a **QSE (Qualifying Small Enterprise)** is an entity with an annual turnover of R10 million but less than R50 million for Contractors and R6 million but less than R25 million for BEPs.

Automatic entitlement for Exempted Micro Enterprises (EMEs)

An EME **is not** automatically entitled to a *level 4 certificate* as in the past. All EMEs with less than 30% black ownership will qualify only for a **level 5** certificate. For an EME to achieve a higher level than level 5, the following is required–

- o 30% but less than 51% black ownership for a **level 4**;
- o 51% but less than 100% black ownership for a **level 2**; and
- o 100% black ownership for a **level 1** contributor status.

All EMEs with less than 100% black ownership may increase their levels–

- o by completing a QSE scorecard with all the elements; or
- o if not opting for the full scorecard, by enhancing its level with one level by obtaining full points (excluding bonus points) for the Skills Development element, **or** the Supplier Development sub-element of the QSE scorecard.

Should an EME not opt for a scorecard and obtain full points for **both elements**, its status could be enhanced by two levels.

An EME with an annual turnover of between R3 million and R10 million for Contractors and R1,8 million and R6 million for BEPs can also **be discounted** a level if it does not meet the 40% sub-minimum points for the Skills Development element.

EMEs **below** R3 million annual turnover for Contractors and R1,8 million for BEPs are not required to conduct a verification but can merely submit an affidavit or CIPC certificate to prove black ownership and annual turnover. Should this category of EMEs wish to enhance their levels by complying with the Skills Development or Supplier Development elements of the QSE scorecard, as pointed out above, they are required to be verified and an affidavit and CIPC certificate would not be accepted. This category of EMEs would, however, not be discounted if the sub-minimum of 40% is not achieved for the Skills Development element.

Recognition levels for Qualifying Small Enterprises (QSEs)

Unlike EMEs, a QSE must be measured on all the elements of the QSE scorecard or could achieve an enhanced level with–

- at least 51% but less than 100% black ownership for a level 2 recognition level; or
- 100% black ownership for a level 1 recognition status.

Those QSEs with enhanced recognition levels achieved based on being 51% black owned can also be enhanced with one level by obtaining **all the points** for either the Skills Development element **or** the Procurement and Supplier Development element (both sub-elements) of the QSE scorecards.

All those QSEs with enhanced recognition levels of **1** and **2** achieved based on being either 100% or at least 51% black owned, may also be discounted a level if they do not meet the **sub-minimum of at least 40%** of the points for the Skills Development element.

To summarise, an existing 51% black-owned QSE entity with a level 2 recognition status could–

- enhance its status to level 1 if it achieves all the points for either Skills Development or Procurement and Supplier Development; or
- stay on level 2 if it achieves less than full points for the Skills Development element but more than the sub-minimum of 40%; or
- be discounted a level to level 3 if it obtains less than the 40% sub-minimum for the Skills Development element.

Skills Development tips for EMEs AND QSEs

As the Skills Development element is important for EMEs and QSEs to enhance their status or avoid being discounted a level, these entities must–

- submit *Workplace Skills Plans (WSPs), Pivotal Plans and Annual Training Reports (ATRs)* before the end of April 2018 to the relevant Setas; and
- conduct *accredited training or offer learnerships* equal to 1,5% of the leviable amount (annual payroll).

How to enhance compliance levels for EMEs and QSEs

Both EMEs and QSEs could also enhance their compliance level by spending 1% of NPAT (Net Profit After Tax) on Supplier Development. QSEs are required to obtain all the points on both sub-elements of Procurement and Supplier Development. Failure to spend on Supplier Development will not result in them dropping a level. The 1% NPAT for Supplier Development purposes is calculated as a three-year average preceding the measurement period and is not based on the NPAT of the measurement period as in the past and as in the case of all other industries. The actual spend, however, must still occur within the measured period.

Entities must also ensure that the expenditure for accredited training and skills transfer (actual training) is incurred within the financial period to be measured, and in the event of learnerships, that those learnerships at least commence within the measurement period.

As many entities have their financial year-ends at the end of February, the above will have to be conducted **before the financial year-end**.

SERR Synergy assist businesses with the *Skills Development and Supplier Development* elements on BEE Scorecards as well as development and implementation of unique *B-BBEE strategies*.

About the Author: Gideon Gerber is one of the founding directors of SERR Synergy and an admitted High Court attorney with more than 30 years' experience in Business Structuring & Compliance, Training, Skills Development and Business Compliance in South Africa, the UK and Namibia. He obtained his Master's Degree in Law from the University of Pretoria with a research thesis on *BEE Fronting*. Gideon is a regular speaker at various B-BBEE seminars and writes articles for the Business Day and Landbouweekblad that concerns BEE Matters.

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