

B-BBEE Credentials

CONSISTENCY IS KEY



Stella Nolan
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Practice Guide 1 of 2018 was issued as a guide, purely to assist organisations with interpreting and testing the validity of B-BBEE Credentials presented to them. It does not in any way constitute a legal document or ruling by the B-BBEE Commission. The purpose of this Practice Guide is to provide consistency as to what is accepted as valid B-BBEE Credentials.

Only a SANAS accredited B-BBEE Certificate, an Affidavit or a B-BBEE Certificate issued by the 'Companies and Intellectual Property Commission' (CIPC) serve as valid B-BBEE Credentials. An organisation presented with B-BBEE Credentials may, as part of their due diligence process, request further relevant information or documents to substantiate the information contained in B-BBEE Credentials submitted.

First and foremost, it is illegal for an organisation to trade with invalid, inconclusive or incorrect B-BBEE Credentials. The consequence of an organisation accepting invalid B-BBEE Credentials is that the procurement spend with that organisation will not be recognised. It is, therefore critical to determine the validity of B-BBEE Credentials at the time of engaging with a supplier.

An Affidavit

A sworn written statement of facts voluntarily made by a person, or deponent, under oath or affirmation administered by a person authorised to do so by law, is the definition of an Affidavit.

A provision in the Codes allows EMEs and QSEs with more than 51% 'Black' Ownership to present an Affidavit to confirm their level of B-BBEE compliance, ownership and annual turnover. The core aim of introducing the Affidavit to establish B-BBEE Credentials was to reduce the cost of compliance and the regulatory burden for these organisations. A template is available to ensure the uniformed structure of an Affidavit, which is available for download on the website of the Department of Trade and Industry (DTI)¹.

Therefore, if an EME or QSE that has more than 51% 'Black' Ownership presents a SANAS accredited B-BBEE Certificate, it is invalid, as it must be in the form of an Affidavit. The only instance where an EME can be verified by a SANAS accredited verification agency is if it opts to maximise its B-BBEE points to move to a higher B-BBEE recognition level, by being measured on a QSE Scorecard.

The only exception to this is the Transport Sector, as the Amended Transport Sector Code has not been published as yet. Until such a time as the Amended Transport Sector Code is published, EMEs representing this sector can choose to obtain a letter from an accounting officer or be verified and issued with a SANAS accredited B-BBEE Certificate.

CONSISTENCY

AFFIDAVIT

B-BBEE ACT

SANAS QSE

EME

SKILLS DEVELOPMENT CIPC

B-BBEE COMMISSION STATUS LEVEL OWNERSHIP

DTI

B-BBEE TRANSFORMATION

CODES

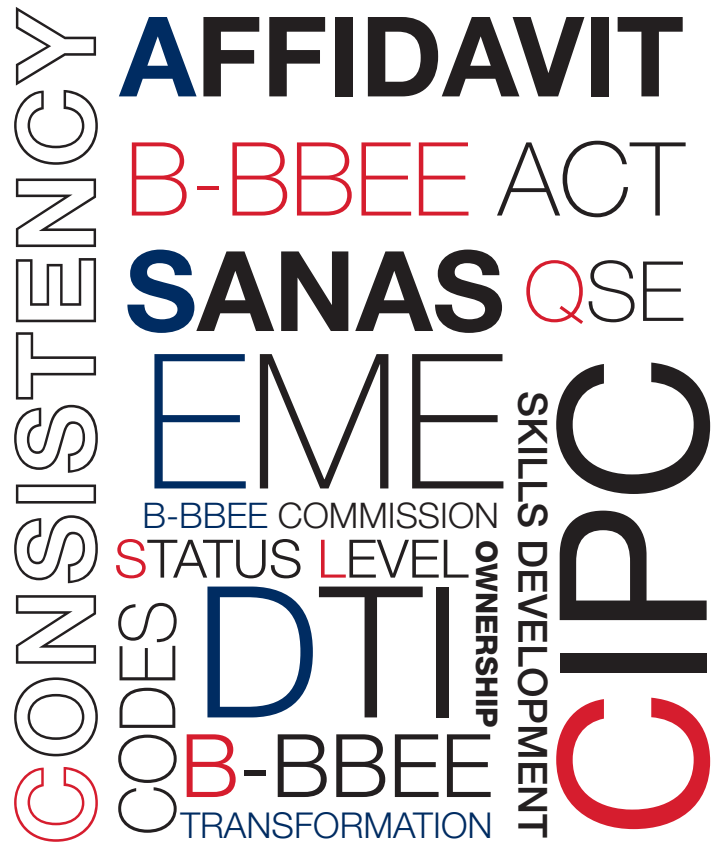
The Construction Sector Code provides for EMEs, whose annual turnover is less than R1.8m for Built Environment Professionals and less than R3m for Contractors, to have automatic recognition levels. Those qualifying as such do not need to undergo a verification process unless they elect to enhance their Status Level. In such circumstances, an EME must meet the 40% Sub-minimum requirements for Skills Development and obtain a B-BBEE Certificate issued by a SANAS accredited verification agency.

Organisations measured on the Financial Services Sector Code that are more than 51% 'Black'-owned QSEs may opt to undergo a verification process by a SANAS accredited verification professional or agency instead of presenting an Affidavit. However, for consistent application, EMEs in the Financial Services Sector need only submit an Affidavit.

Start-ups are categorised as EMEs. This threshold is applied to an organisation during its first 12-months of incorporation. However, if a Start-up opts to tender for contracts between R10m and R50m, they must be verified using the QSE scorecard. In the case of tenders valued above R50m, a Start-up must be verified using the Large Enterprise scorecard.

The following pointers are key in determining the validity of an Affidavit:

- > Full name or names of the deponent as it appears in an identity document, including the identity number.
- > The designation of the deponent as a Director, Owner or Member must be included to indicate that the deponent is duly authorised to depose an Affidavit on behalf of the organisation.
- > Name of the organisation as per the registration documents issued by the CIPC.
- > Full business address.
- > Percentage of 'Black' Ownership, 'Black' Women Ownership or that of Designated Group must be indicated. In the case of Specialised Enterprises as per Statement 004, the percentage of 'Black' Beneficiaries must reflect.
- > Total revenue for the year under review to include whether the outcome is based on audited financial statements or management accounts.
- > Financial year-end, as per the CIPC registration documents, which were used to determine the total revenue.
- > The Status Level and corresponding Preferential Procurement Recognition level. Note, an organisation can only have one Status Level.
- > Empowering Supplier status must be indicated. For QSEs, the deponent must select the basis for the Empowering Supplier status. Note, the DTI suspended the 2014 criteria for 'Empowering Supplier' status until further notice. Therefore, any organisation with a valid B-BBEE Certificate is considered an 'Empowering Supplier' until otherwise gazetted.
- > The date on which the deponent has signed the Affidavit must coincide with that of the Commissioner of Oaths.



- > A Commissioner of Oaths cannot be an employee or ex officio of the deponent of the Affidavit, as by law a person cannot commission an Affidavit in which they have an interest.

B-BBEE Certificate issued by the CIPC

To reduce costs for start-ups and EMEs, on 6th May 2015 the DTI issued Gazette # 38765. This provided a mandate for the CIPC to issue B-BBEE Certificates that hold the same status as an Affidavit. Subsequently, the CIPC issued a Customer Notice indicating that B-BBEE Certificates can be applied for via e-services on the CIPC website, or at Self Service Terminals when registering or filing Annual Returns.

The following conditions apply when an enterprise uses the CIPC to obtain a valid B-BBEE certificate:

- > Only Directors of an organisation or Member of a close corporation can apply for a B-BBEE Certificate;
- > Only organisations and close corporations with a turnover of less than R10m can apply through the CIPC;
- > The status of the company must state 'In Business';
- > All 'Annual Return' filings for the relevant organisation or close corporation must be up to date;
- > Application for a B-BBEE Certificate can be made at any time - not only when registering an organisation or filing returns. This is, however, on the provision that an application for a certificate is valid.
- > Applicant must agree to the B-BBEE terms and conditions; and
- > A Director or Member amendment must be filed if the Director or Member's email address or telephone is not correct or up to date².

A CIPC certificate may be submitted to the B-BBEE Commission for validation that it was generated from the CIPC system³. However, on face value, the following information must appear on the certificate:

- > Name of organisation, registration number and business address.
- > Date of issue and expiry equal to 12 months, for example, 9th June 2019 to 8th June 2020.
- > Percentage of total 'Black' Ownership, 'Black' Woman Ownership, as well as total 'White' Ownership, must reflect.
- > The certificate number.
- > The barcode with a tracking number, as well as the unique number allocated to a specific organisation, must appear.
- > The Status Level and allocated Preferential Procurement Recognition level must be displayed.
- > The DTI logo must appear on the top left corner.
- > The CIPC logo must appear on the top right corner.
- > The CIPC watermark must be visible.

"Determine the validity of B-BBEE Credentials at the time of engagement."

Elements that constitute a valid SANAS accredited B-BBEE Certificate:

Verification is the process and activities performed by a verification agency or professional to assess, verify and validate evidence to determine the overall score awarded to an organisation and to ensure that it is the true outcome of a verification process. It must reflect individual scorecard evidence supplied by an organisation.

The process is to evaluate B-BBEE transactions per element over a specified period to provide an indicative score and certification based on the Code on which an organisation is qualified to be measured.

A verification process is an assurance that an organisation has achieved what is reflecting on its B-BBEE Certificate. By issuing a B-BBEE Certificate, a verification agency or professional confirms that the information on which the certificate was issued is, in fact, acceptable, has been independently verified and is free from misstatements.

Therefore, the role of a verification agency or professional is to independently assess, verify and validate both disclosed and undisclosed B-BBEE related information provided by the organisation at the time of verification. Taking this into account, a verification should be performed in line with the principles contained in the B-BBEE Act (The Act) and relevant Code. It confirms that verification methodologies outlined in the Framework for accreditation were applied. This includes alignment with the expectations of the verification manual and the Accreditation of B-BBEE Verification Agencies document issued by SANAS – otherwise referred to as the R47-02.

Important to note is that a verification agency or professional may not provide clarity or opinions on interpretations in any B-BBEE matter. Any such clarification must be sought from the B-BBEE Commission³.

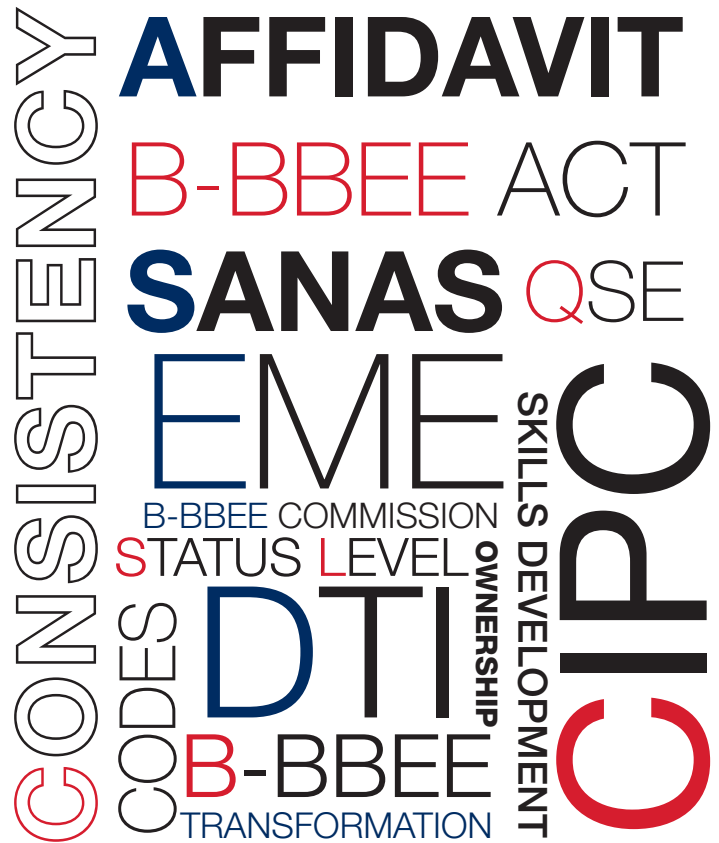
A SANAS accredited B-BBEE Certificate must incorporate the following non-negotiable information:

- > Name and business address of the organisation as per registration documents issued by the CIPC.
- > Value-added Tax number, where applicable.
- > The B-BBEE Scorecard against which the certificate was issued. It must further indicate all elements and scores achieved for each component. The actual score achieved must be linked to the total points as per the relevant Code.
- > The Status Level of an organisation to include the corresponding Preferential Procurement Recognition level.
- > The relevant Code used to issue the B-BBEE Certificate.
- > Date of issue and expiry, for example, 9th June 2019 to 8th June 2020.
- > Reference as to whether an organisation was subject to a re-verification process due to material changes. In this case, a re-issued Certificate must reflect the initial date of issue and expiry and include the date of re-issue and expiry. A re-verification does not extend the lifespan of a B-BBEE Certificate.



- > The financial period that was used to issue the B-BBEE Certificate.
- > The unique identification number allocated to an accredited B-BBEE verification agency or professional. This information can be cross-referenced on the SANAS website⁴.
- > The name, logo and/or mark of the B-BBEE verification agency or professional.
- > The full name and signature of the Technical Signatory that signed off the certificate at the bottom of the certificate. The details of all authorised technical signatories are available on the SANAS website⁴. Only a Technical Signatory is authorised to sign off a B-BBEE Certificate.
- > The SANAS logo must feature.

Upon being presented with a SANAS accredited B-BBEE Certificate, the recipient is entitled to request confirmation of its issuance. Another point of reference is the SANAS website for verifying the accreditation status, accreditation period and scope of accreditation relevant to a verification agency or professional. The SANAS website further provides a list of verification agencies or professionals whose accreditation status has been withdrawn or suspended. Any verification agency or professional is unauthorised to issue a B-BBEE Certificate if their accreditation status has expired, been revoked or suspended.



Penalties for circumventing The Act

Trading with invalid or fraudulent B-BBEE Credentials may constitute an offence in terms of Section 130 (1) (a) of The Act, which states:

"A person commits an offence if that person knowingly misrepresents or attempts to misrepresent the B-BBEE status of an enterprise, and the B-BBEE Commission may institute an investigation in terms of Section 13J of The Act."

Section 13A of The Act has empowered organs-of-state and public entities to cancel any contract or authorisation awarded on account of false information knowingly furnished by or on behalf of an organisation in respect of its B-BBEE status.

If an organisation is found to have violated The Act, a fine of up to 10% of an organisation's annual turnover may be imposed. Furthermore, individuals involved in any misrepresentation risk imprisonment for up to 10 years.

In terms of section 130(2), a verification professional, procurement officer or any official of an organ-of-state or public entity who becomes aware of the commission of, or attempt to commit, any offence referred to under section 130 (1) and fails to report it, is guilty of an offence.

*Mariska Harding
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Source of reference
http://www.thedti.gov.za/economic_empowerment/bee_codes.jsp
www.cipc.co.za
Mr. Madidimalo Ramare at MRamare@beecommission.gov.za
https://www.sanas.co.za/af-directory/bbbee_list.php