

HEED THE WARNING

Don't allow your Skills Development spend to become low hanging fruit.

By: Pearl Dippenaar

Pearl Dippenaar is the YES Programme Manager at the BEE Chamber. Her journey with YES began in 2019. Working in the field has provided her with extensive knowledge about the YES Initiative, including implementing learnerships. The core to her holistic service is providing due diligence on training providers on behalf of BEE Chamber members and ensuring the smooth running of their YES Programme.

Skills Development as a Priority Element is critical to an organisation's scorecard. This element aims to upskill Beneficiaries, then provide an employment opportunity whereby the scorecard rewards organisations with Bonus Points for Absorption by design. Whether they spend the target of 6% of the leviable amount or less, it is an investment for most organisations. Hence the money paid out to service providers in this space, for those unethically operating, is considered low hanging fruit.

Since the introduction of the Generic Codes of Good Practice in 2007, unethical service providers operating in the Skills Development space have been circling. It goes without saying that working within the Skills Development space, one sees the very best and worst in a transforming South Africa. Taking the latter into account, this article intends to warn organisations of the risks involved when dealing with unethical Skills Development service providers. Those operating ethically in the field will appreciate having the modus operandi revealed of charlatans in this space. Using a scenario, we aim to illustrate how unethical service providers operate, as we delve into the transformation journey of ABC Traders, a Large Enterprise with 1,000 employees. They have a Status Level 6 with an associated 60% Preferential Procurement Recognition.

ABC Traders' Current Situation

Investment in ABC Traders' B-BBEE Strategy includes expanding its operation. In 2019 and 2020, ABC Traders had difficulty gaining and retaining business due to their unfavourable B-BBEE Status Level. Following an executive decision, the ABC Traders Executive Team set a goal to achieve a Status Level 3 at ABC Traders' next B-BBEE Verification.

They employ a Transformation Manager to oversee and implement its B-BBEE Strategy. To prepare the Transformation Manager immediately:

- > Appoints B-BBEE Consultants and legal advisers to overhaul their Ownership Structure.
- > Engages with the Human Resources Department to develop a workable plan to ensure equitable representation within ABC Traders.
- > Re-looks how Beneficiaries are identified and how their Enterprise & Supplier Development Strategy is implemented.
- > Retains the services of a Skills Development service provider to roll out their strategy.
- > Invests in initiatives that create income-generating opportunities for their Socio-Economic Development Beneficiaries.

The Transformation Manager is hastily ticking all the to-do boxes, but is falling short in Skills Development. It is one month after ABC Traders' financial-year end. Before employing the Transformation Manager, ABC Traders was lax in its B-BBEE roll-out, specifically in Skills Development. At this stage, ABC Traders had not registered Learners, although they had allocated the spend necessary to implement it. Furthermore, a successful Skills Development roll-out and Absorption strategy would secure its plan to expand its internal operation.

Phase 1 – Engagement

Bear in mind that ABC Traders did not make any payments for Skills Development in their last financial year. However, to take the process forward, the Transformation Manager makes an appointment with three Skills Development Service Providers. Two of the three advise that they can only assist ABC Traders in its next financial year, as it did not register Learners in the year ending 2021. However, the third service provider, XYZ Skills, advised that non-registration and payment within ABC Traders' financial period were merely semantics. They would simply backdate the registration and proof of payment so that ABC Traders could claim their skills spend to align with its financial year. Without red flags registering, the Transformation Manager signs a contract with XYZ Skills and immediately pays over the R21,000.00 for each of the five Learners, totalling R120,750 that includes 15% VAT.

Before engaging with XYZ Skills, the Transformation Manager did not:

- > Ascertain whether XYZ Skills would outsource the services to a third party;
- > Conduct a reference check;
- > Ascertain SETA registrations;
- > Establish the method that would confirm the payment of salaries on the agreed date;
- > Ascertain how they source their learners; and
- > Determine if they receive or pay commissions based on ABC Traders' Skills Development roll-out.

The Transformation Manager did not do due diligence out of desperation to meet the mandate. Essentially a decision was made to contract and make a subsequent payment of R120,750.00 based on XYZ Skills' willingness to backdate the registration and accept payment for ABC Traders' Learners. Hence, the skills spend could be claimed at its following B-BBEE Verification.

Phase 2 – following the payment

After receiving the money, XYZ Skills advised the Transformation Manager to relax and that they would provide ABC Traders with evidence that the registration and payment for the Learners would be backdated to align with ABC Traders' financial year. XYZ Skills then agreed to source the Learners and register them with the necessary SETA. Once the initial stage was complete, XYZ Skills said they would send confirmation of the registration with Superior Learning, the chosen service provider. Furthermore, XYZ Skills confirmed that they would send evidence for the payment of salaries to the Learners. With so much on the Transformation Manager's plate and confidence in XYZ Skills' ability, another tick was added to the transformation to-do list.

The Transformation Manager should not have accepted the word of XYZ Skills. Processes should have been in place whereby the Transformation Manager would receive regular progress reports supporting all milestones achieved by XYZ Skills.

Phase 3 – The red flags appear

About three months later, the Transformation Manager receives a call from one of ABC Traders' Learners stating that they had not received their salary. In addition, the learning institution chosen by XYZ Skills, Superior Learning, advised the Learner that they could not return the following week due to non-payment for services rendered. In addition, XYZ Skills informed the Learner that the Skills Development service provider was changing to the Level-up Institution from the following week. Horrified, the Transformation Manager realises that there was no communication from XYZ Skills about who the Learners were and how and when they would receive remuneration or registration status.

The Transformation Manager should have had a list of Learners and identity numbers, so there would be confirmation that the Learner was just that when the call came through. Further, the Transformation Manager should know what institution the Learners were attending and should have done a site visit to confirm that the facilities met the needs of the ABC Traders Learners.

Phase 4 – follow the money

Over two weeks, the Transformation Manager could not reach XYZ Skills via email or telephonically. The Transformation Manager contacted the relevant SETA to confirm the registration of Learners. The result was that the SETA did receive the applications. However, they had not been processed.

The next step was to contact Superior Learning to ascertain the status of the Learners. Superior Learning advised that five Learners were registered three months prior. They had agreed with XYZ Skills that they would receive payments monthly. Unfortunately, XYZ Skills made no payment to the SETAs or towards the training and stipends due to the Learners, which meant they could not financially sustain them. Subsequently, Superior Learning halted the Learners' registration initially submitted to the SETA by XYZ Skills.



The Transformation Manager contacted Level-up who confirmed that five Learners were registered two weeks prior, and they had a contractual agreement with XYZ Skills to pay them monthly. Level-up confirmed that they had received no payment.

As ABC Traders made no Learner registrations or payments, it could not claim its Skills Development spend. Another challenge is that two institutions have provided services without receiving payment. Furthermore, there is no way to confirm who the Learners are and their salary payments status. ABC Traders' Skills Development Strategy is at risk of collapsing.

Phase 5 – Paying a Premium

Following due diligence, to save ABC Traders' Skills Development investment, as XYZ Skills is still on the missing list, the Transformation Manager engages the services of Superior Learning directly, thus paying out another R120,750.00.

Superior Learning undertakes the challenge. It had to re-recruit Learners and engage with the SETA to apply for an extension. Superior Learning then provides evidence that the Learners were registered and received their salaries.

Of concern is that XYZ Skills remains on the missing list.

To resuscitate the Skills Development Strategy, ABC Traders had to engage with Superior Learning to take over the mandate. ABC Traders had not even received the basic logs that would have confirmed its engagement with the Learners. The premium paid by ABC Traders extends beyond the cost and time to resuscitate its strategy.

Phase 6 – The outcome

ABC Traders could not claim any Skills Development spend at their next B-BBEE Verification for the 2019 financial year. Consequently, the Discounting Principle was triggered, which means they lost a Status Level. However, following a successful roll-out with Superior Learning, ABC Traders could claim R120,750.00 for the financial year ending 2020.

Unfortunately, ABC Traders' B-BBEE Rating Agency did not recognise the R120,750.00 paid to XYZ Skills for Skills Development services; thus, the amount was registered as a loss in its financial statements.

The Transformation Manager eventually delivered on the Skills Development mandate, albeit a year later and achieved Bonus Points for Absorption. However, ABC Traders could not recover the money paid to XYZ Skills.

The outcome was that XYZ Skills, upon receiving the funds, had gone the route of ghosting ABC Traders whilst continuing to solicit new business. Adding insult to injury, XYZ Skills provides ABC Traders as a reference when sourcing new low hanging fruit. XYZ Skills remains operational.

The nightmare of Skills Development Service Providers does not end with the scenario outlined in this article. Other typical low hanging fruit includes, but is not limited to:

- > Learners who complete a Management NQF 3 only to discover that the said Learnership was registered as a Business Administration NQF 3 with another SETA.
- > The registration of identical Learners over two consecutive Measurement Periods.
- > Registering the identical Learners with two organisations represented by different SETAs, pocketing one portion of the money received.
- > Not paying the full salary over to the Learner, then retaining some funds. There is a deficit between the payslip and the money paid to the Learner.
- > Paying stipends to Learners without any tuition.

Both the scenario and the examples provided illustrate that an organisation's Skills Development spend is low hanging fruit for charlatans operating in the Skills Development space. When choosing a service provider, due diligence will ensure that an organisation does not have to resuscitate a Skills Development Strategy. Core to due diligence is knowing the following:

What is a Skills Development training provider?

It is an organisation that provides occupational learning as per Section 1 of the Skills Development Act 37 of 2008.

What is an Employment and Skills Development Agency?

"An Employment and Skills Development Agency (ESDA) is an organisation or company that, through written agreement with an employer, employs learners and manages the placement of the learners with host employers for on-the-job training and assessment and approved training institutions for off-the-job training to complete a regulated training program, a learnership or apprenticeship," – Skills Development Act.

What is a learnership and what does it comprise?

The Skills Development Act and Regulations guiding Learnerships require:

- > A structured learning component that includes both practical and work experience;
- > A specified nature and duration of intervention that it leads to a qualification registered by the South African Qualifications Authority and relates to an occupation; and
- > Registration with the Director-General in the prescribed manner.

How does an organisation mitigate the risk of Fronting Practice?

It is conduct that undermines or frustrates achieving the objectives in the B-BBEE Act. Before engaging with a Skills Development service provider, an organisation must:

- > Assess core and critical skills from the primary SETA. Accessing the incorrect SETA may result in a B-BBEE Rating Agency not allowing Skills Development spend as a claim.
- > Form a Skills, B-BBEE or Steering Committee to assess core and critical skills.
- > Be aware of the specific skills required.
- > Obtain an NQF report from an organisation's primary SETA's website.

Due diligence before contracting a Skills Development service provider would include establishing the following:

- > How long have they been in business?
- > Did they previously trade under another company name?
- > What are the geographical areas they operate in?
- > Do they have references that support a solid track record?
- > What is the average drop-out rate of Learners?
- > Do they rely on third-party intervention?
- > Are the Learners' salaries or wages in line with the national minimum wage requirements?
- > Can they furnish evidence that they are an accredited Skills Development service provider?
- > Do they adhere to the standards of the body of their accreditation?
- > Can they provide a financial viability report from their auditors?
- > Do they agree to a site visit to confirm that the facilities will adequately accommodate Learners from both an infrastructural and geographical perspective?
- > Can they confirm that they have the in-house capacity to meet the contract requirements?
- > Do they have a good relationship with the primary SETA aligned with the sector an organisation represents?

Due Diligence Red Flag areas

- > Unrealistic Absorption guaranteed;
- > A willingness to circumvent the requirements of the Skills Development Scorecard;
- > Can only operate with the support of third-party service providers;
- > Outsourcing of services;
- > Inability to provide accreditation evidence in the company name under which they operate.

What are the risks when engaging with unscrupulous Skills Development training providers?

An unscrupulous training provider will only reveal itself once the contract has been signed. Even though an organisation might have the best intentions, there are dire consequences for incorrectly implementing Skills Development, namely:

- > No recognition of the Skills Development Scorecard;
- > Investigation into Fronting Practices;
- > The rejection of future mandatory grant applications from the relevant SETA;
- > Having to repay Skills Development spend to resuscitate a Skills Intervention and the loss of claimable tax as per section 12H of the Income Tax Act;
- > The rejection of a Work Skills Plan by the relevant SETA;
- > A fine; and
- > Reputational damage.

Using a reputable Skills Development service provider can be the difference between a Skills Development spend being allowed or disallowed at a B-BBEE Verification. The reason is that an organisation can only make a Skills Development claim after completing the Learnership Programme.

Although running a Learnership programme can be tedious, contracting a service provider who provides an ethical and meaningful skills intervention goes far beyond the points of an organisation's Skills Development Scorecard.

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