



public enterprises

Department:
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REPUBLIC OF SOUTH AFRICA

National Department of Public Enterprises

State Owned Enterprises' Non-Core Property Disposal Policy and Broad-Based Black Economic Empowerment Guidelines

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1. INTRODUCTION

- 1.1. Property is a strategic and productive asset, a vehicle for economic development, service delivery and transformation.
- 1.2. In line with government restructuring and a focus on core business among State Owned Enterprises (SOE), the Department of Public Enterprises (DPE) has embarked on a process to reduce inefficiencies associated with SOE property portfolios.
- 1.3. Thus far, the disposal of non-core immovable assets has posed a number of challenges. These include inadequate numbers of officials to handle disposals in SOE and uncoordinated disposals. There is a need to ensure that, as far as possible, disposals are in line with SOE mandate and government's service delivery objectives. It is also important to ensure that only assets that are no longer core to SOE operations are disposed of to avert any disposals where the properties may be required at some point in future.
- 1.4. As a result, the DPE has initiated process, in conjunction with SOE, to dispose of non-core property in a coherent manner. SOE have identified property that is no longer considered core to operations and resolved to dispose of these properties. Non-core property is property that is not related to current or future expected operational requirements, and where disposal or alternative development will not compromise current or expected government requirements.
- 1.5. In the first round of property disposals, four disposal categories were identified including property for sale; disposal to the state, property for housing and development. The Broad-Based Black Economic Empowerment (B-BBEE) Guidelines only apply to the properties for sale category / property for sale on the open market.
- 1.6. The disposal of non-core property provides a key opportunity to advance B-BBEE and make a significant impact on the transformation of the property sector. In general, transformation in the sector has been slow compared to other sectors. Until recently, only those enterprises which have dealt directly with government, primarily through property services companies, have addressed B-BBEE in any form.
- 1.7. The following SOE Non-Core Property Disposal Policy and B-BBEE Guidelines aim to improve on the efficiency of the disposal process, promote consistency in respect of the disposals and empowerment across all SOE and provide a clear set of empowerment criteria to the market.

2. OBJECTIVES

- 2.1. As the custodians of a significant proportion of state property, the DPE and the SOE are committed to implement deliberate measures to increase black participation in, and benefit from property disposals and in the services surrounding these processes.

2.2. These B-BBEE Guidelines:

- 2.2.1. Provide the framework within which disposal processes and related transactions are to be implemented. The aim is to promote efficiency and consistency across SOE to enable the SOE to prioritise preference not only in respect of value, but also in terms of beneficiary selection and method of disposal in order to achieve the best transformation objective, social, economic or other value from immovable asset disposal.
- 2.2.2. Promote the optimum management of SOE asset portfolio.
- 2.2.3. Encourage commercially viable local and regional economic development, through development of properties and investment in targeted areas.
- 2.2.4. Provide for asset disposal for housing, land reform, local economic development and other socio-economic imperatives.
- 2.2.5. Provide an assurance that the disposal process will be implemented in the context of the transformation within the property sector and will promote B-BBEE and the development of micro and small enterprises.

3. REGULATORY FRAMEWORK

- 3.1. The DPE SOE Non-Core Property Disposal Policy and B-BBEE Guidelines are guided by the following regulatory framework.
- 3.2. For the purpose of the SOE non-core property disposals, it should be noted that the Generic Codes of Good Practice for B-BBEE constitute the overarching means of monitoring B-BBEE compliance and not transformation charters which charters remain voluntary statements of intent by the sectors to achieve socio-economic transformation and merely expressions of the industries' commitment to transformation. The Generic Codes of Good Practice will only be superseded in the event that a transformation charter is gazetted as a sector code in terms of section 9 of the Broad-Based Black Economic Empowerment (B-BBEE), (Act 53 of 2003) in which event the sector codes will enjoy equal status with the Generic Codes of Good Practice. Until then, transformation charters are of no legal status, and are not binding on organs of state or public entities, and are for informational purposes only.
- 3.3. Constitution of the Republic of South Africa, 1996
- 3.4. State Land Disposal Act, 1961 (Act 48 of 1961)
- 3.5. Provincial Land Administration Acts:
 - 3.5.1. Eastern Cape Land Disposal Act, 2000 (Act No. 7 of 2000)
 - 3.5.2. Free State Land Administration Act, 1998 (Act No. 1 of 1998)
 - 3.5.3. Gauteng Land Administration Act, 1996 (Act No. 11 of 1996)
 - 3.5.4. KwaZulu-Natal Land Administration Act, 2003 (Act No. 3 of 2003)
 - 3.5.5. Mpumalanga Land Administration Act, 1998 (Act No. 5 of 1998)
 - 3.5.6. Northern Province Land Administration Act, 1999 (Act No. 6 of 1999)
 - 3.5.7. Northern Cape Land Administration Act, 2002 (Act No. 6 of 2002)
 - 3.5.8. North West Land Administration Act, 2001 (Act No. 4 of 2001)
 - 3.5.9. Western Cape Land Administration Act, 1998 (Act No. 6 of 1998)

- 3.6. Public Finance Management Act, 1999 (Act 1 of 1999) and the National Treasury Regulations published in terms of Section 76 of the PFMA
- 3.7. Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000)
- 3.8. Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003), codes of good practice, including sector charters, which may be issued in terms of that Act
- 3.9. Provision of Land and Assistance Act, 1993 (Act 126 of 1993)
- 3.10. Restitution of Land Rights Act, 1994 (Act 22 of 1994)
- 3.11. Extension of Security of Tenure Act, 1997 (Act 62 of 1997)
- 3.12. Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act 19 of 1998)

4. APPLICATION

- 4.1. The SOE Non-Core Property Disposal Policy and B-BBEE Guidelines apply to all State Owned Enterprises and, within the mandate of these entities, must be complied with for the disposal of immovable assets.

5. REASONS FOR DISPOSAL

Immovable assets may be disposed of to promote the following:

- 5.1. Broad-Based Black Economic Empowerment (BBBEE)
 - 5.1.1. In keeping with the spirit of the guidelines, the SOE will ensure that the non-core portfolios and services related to the disposals will facilitate empowerment of black people, black designated groups and black women.
 - 5.1.2. It is expected that all companies bidding for assets will meet the criteria outlined in Codes of Good Practice issued in terms of the B-BBEE Act. Any enterprise bidding for SOE property will need to supply evidence of its level of compliance with B-BBEE.
 - 5.1.3. In the context of the disposal of State-owned immovable assets, participation and/or increased participation of black people; black designated groups and black women in management, control and ownership of such assets; and procurement of services relating to the assets, will be promoted.
 - 5.1.4. DPE's commitment to the promotion of B-BBEE co-exists with a commitment to the promotion of Foreign Direct Investment in the South African economy. SOE are encouraged to accommodate multinational bidders, where relevant, in their evaluation approach in a fair and reasonable manner that is consistent with the B-BBEE Act and the CGP.

5.2. Land Reform

Government's land reform programme aims to redress the injustices of racially-based land policies of the apartheid era, which caused insecurity, landlessness and poverty amongst black people; the inequitable distribution of land ownership; the need for security of tenure for all and the need for sustainable use of land. While there are no apparent land reform issues associated with the SOE properties for disposal, land reform is central to Government's growth, employment and redistribution strategy.

5.3. Rural Development and Urban Renewal

Where an immovable asset is identified for socio-economic purposes in terms of the Integrated Development Plan (IDP) and Spatial Development Framework (SDF) of a municipality, the SOE should consider the transfer of such asset to the municipality, subject to Board and, where relevant, Treasury approval.

5.4. Affordable / Social Housing

Where an immovable asset is identified for the development of affordable or social housing, the Department should consider the transfer of such asset to the Department of Housing (DOH).

5.5. Assets no longer cost-effective to manage and maintain or surplus to the needs of the SOE

Generally, immovable assets are only of value to SOE if such assets continue to support core operations in a cost-effective and efficient manner. Therefore, assets that are no longer cost-effective to manage and maintain or which no longer support the service delivery objectives of SOE should be considered for disposal.

6. DISPOSAL PROCESS

A State Owned Enterprise or a wholly owned subsidiary of a SOE may not dispose of any property unless it has first offered that property for sale to the State and other SOE via the Department of Public Enterprises under the same terms and conditions it is otherwise prepared to dispose of that property. The procedures governing the State's right of first refusal will be communicated to the SOE once this has been prescribed by the Minister for Public Enterprises. Wherever possible, the immovable asset shall be transferred at fair market value and all costs related to the transfer shall be borne by the receiving custodian.

Key components of the disposal process are as follows:

- SOE lists of non-core property must be disclosed to DPE for information where such information has not yet been submitted to the Department.
- DPE will respond to the SOE on receipt of the list and may request further clarity on the approach.
- DPE will ensure the dissemination of relevant information to government departments in support of the State's right of first refusal and communicate to SOE in this regard.
- Once proposed State transactions have been determined, disposals to the market may proceed.
- Compliance with the SOE Non-Core Property Disposal Policy and B-BBEE Guidelines.
- Compliance with the Materiality and Significance Framework in relation to the disposal of non-core assets, noting that the threshold in relation to individual property disposals is equal to or greater than R50 million. The submission of a Section 54(2) Public Finance Management Act application will therefore be required where such approval has not yet been granted for individual property disposals of R50 million and above.
- Lease agreements for non-core property assets may only be for a period of 5 years. Exemption from this will require a Section 54(2) application and should only be considered where property values will be significantly enhanced.

7. FORMS OF DISPOSAL

Once the State has exercised its right of first refusal, any one or combination of the following methods of disposal may be employed by the custodian SOE to obtain the best value from the disposal of an immovable asset. Under no circumstances will state immovable property be sold by auction.

7.1. Sale on Open Tender

- 7.1.1. All sales of immovable assets should be at current market value, unless the approval of the relevant Treasury has been obtained (in terms of Treasury Regulations).
- 7.1.2. These properties may be disposed of to members of the public and entities in the private sector in accordance with this Disposal Policy and Broad-Based Black Economic Empowerment Guidelines. Such transactions are subject to the disposal and tendering policies of the SOE as long as these are not in conflict with this Disposal Policy and B-BBEE Guidelines.
- 7.1.3. Properties may be disposed of to organisations representing civil society for socio-economic and/or developmental purposes.

7.2. Sale without Competition

Other than in exceptional circumstances, all sales of immovable assets should be on open tender, unless:

- 7.2.1. The State has exercised its right of first refusal in furtherance of government's developmental mandate.
- 7.2.2. The direct sale to any other party is rendered necessary by circumstances surrounding the asset e.g. land-locked properties, or land that is insignificant in extent or otherwise not economically viable unless it forms part of an adjacent piece of land.
- 7.2.3. Properties are identified for donation to CBOs, NGOs and civil society organisations.
- 7.2.4. There may be instances where properties are of a non-commercial nature and there is limited or no interest.
- 7.2.5. As a consequence, the SOE may determine that there will be no competition and evaluate the bid on price alone.

7.3. Donation "Gratis" Transfer

If property assets are donated or sold below market value resulting in a deemed donation, there may be Donations tax and Capital Gains Tax (CGT) implications. Donations tax is levied in terms of Sections 54 and 55 of the Income Tax Act. Donations to the State are exempted in terms of Section 56. Capital Gains Tax (CGT) is levied on donations in terms of the 8th schedule of the Income Tax Act - on the difference between the base cost and the market value of the fixed asset at the time of donation with market value deemed to be the selling price. There are no concessions on CGT for donations to the State. Donations are subject to SOE Board approval and National Treasury in terms of Treasury Regulations.

7.4. Exchange

- 7.4.1. The process of exchange means that a disposal and an acquisition are taking place simultaneously and therefore the rules of both must apply.

- 7.4.2. Exchange usually occurs where one party approaches another to purchase an immovable asset and instead of a purchase price being agreed, the parties exchange ownership of their respective immovable assets.
- 7.4.3. Should one immovable asset be of a higher monetary value than the other, a cash payment equivalent to the shortfall (being the difference between the two values) shall be made by the party whose asset is of lesser value. Any deviation from this principle will require the approval of the relevant Treasury.
- 7.4.4. Only custodians of state land may enter into agreements regarding the exchange of immovable assets.
- 7.5. Public Private and Public-Public Partnerships (PPP)
 - 7.5.1. In the context of disposals, a Public Private Partnership entails a commercial transaction between Government and a private party, in terms of which the private party acquires the use of a State-owned immovable asset for the private party's commercial use and simultaneously assumes financial, technical and operational risk in connection with the use of such immovable asset. Ownership of the immovable asset remains vested in the SOE.
 - 7.5.2. Similarly, Public-Public Partnerships entail collaboration between public entities to ensure specific outcomes in the interest of the public good and could involve commercial transactions between public counterparts.
 - 7.5.3. Both types of partnership arrangements may only be entered into on written approval by the Minister of Public Enterprises and National Treasury (in terms of the PPP Toolkit issued by National Treasury).
 - 7.5.4. The policy guidelines and procedures governing PPP agreements are set out in the relevant National Treasury PPP Practice Notes.
- 7.6. Unsolicited Bids
 - 7.6.1. Unsolicited bids are difficult to manage and can potentially violate constitutional protection of fair and transparent administrative process and competitive procurement. The DPE and SOE shall, therefore, not make any commitment that will undermine competitive procurement or otherwise lead to unfair advantage of one party over others.
 - 7.6.2. Should the merits and circumstances of an unsolicited request for the disposal of a state-owned asset warrant consideration, the SOE shall invite public comment on the request (through advertisements in appropriate media) before a final recommendation is made.
 - 7.6.3. Where a proposal has been received for property development, land sale, or leasing, the following will apply:
 - The site and proposal will be advertised in the media to call forth for competitive proposals or objections from the public.
 - Once the advert has elicited a response from the market, then a competitive proposal call will be initiated as per these guidelines and procurement policies of the SOE and in keeping with this Policy and B-BBEE Guidelines.
- 7.7. Disposal to political office-bearers and officials in the employ of Government or State Owned Enterprises:
 - 7.7.1. The mere fact that a political office-bearer or an official in the employ of an SOE is accommodated in a SOE residence does not automatically entitle such political office-bearer or official to acquire such immovable asset in the event of disposal thereof by a custodian SOE.

- 7.7.2. Residential properties declared surplus and ready for disposal may first be offered for sale or rental, at market value, to officials who are in legal occupation thereof as their primary residence. However, any arrears will need to be settled in full for officials to be eligible for this dispensation. Tenants who do not wish or are otherwise unable to exercise this option shall be given written notice of three (3) months to vacate the premises.
- 7.7.3. Officials in the employ of the Department of Public Enterprises shall not have the right to make an offer for the acquisition of immovable assets being disposed of by any SOE.
- 7.7.4. Apart from 7.7.2, officials in the employ of a specific SOE shall not have the right to make an offer for the acquisition of immovable assets being disposed of by that SOE.
- 7.7.5. A political office-bearer or an official in the employ of the SOE or Government, who, in his/her personal capacity, has a direct or indirect interest in an immovable asset proposed for disposal, shall declare such interest if the failure to declare such interest may potentially result in a process that appears unfair, prejudicial or in any manner contrary to the principles of this Policy.
- 7.7.6. An official in the employ of a SOE shall not act as a member of a panel responsible for assessing and adjudicating tenders relating to the proposed disposals if his/her presence in such panel may potentially be deemed to be unfairly influential, discriminatory or in any manner contrary to the principles of this Policy.

8. DISPOSAL OF RIGHTS IN IMMOVABLE ASSETS

8.1. Servitudes

- 8.1.1. A servitude can be defined as a right which one person has over the immovable asset of another. In this document, servitude refers to instances in which the SOE grants a party a right (e.g. right of way, grazing right, right to draw water etc) over a State-owned immovable asset under its control.
- 8.1.2. Servitudes may be granted to any person (private or state organ) upon payment of appropriate market-related compensation.
- 8.1.3. Servitudes result in a burden on the immovable asset for extensive periods of time, usually permanently. It is for this reason that the SOE will grant servitudes only after careful assessment of the impact of the proposed servitude on the immovable asset. If the proposed servitude will result in the SOE being unable to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then the SOE shall not grant such servitude.

9. TARGETS

- 9.1. Recognising the potential impact the disposal of government property may have on transformation in the property sector and on property ownership patterns in general, it is imperative that the SOE take steps to ensure that property related disposals to targeted enterprises, including black people are substantially increased.
- 9.2. Consequently, it is proposed that each SOE aim to meet the following target:

A minimum of 70% of all asset disposals by value (other than those for transfer to government or housing) must be to entities with a B-BBEE Status of at least Level 4, i.e. entities with scorecard points equal to and above 65%.

10. QUALIFICATION CRITERIA

10.1. General

10.1.1. In an open or closed tender, there are two possible options to assess levels of empowerment, namely:

- A minimum score as a requirement to participate in tender process (“the absolute criterion”) and/or
- Score is one of the factors taken into consideration in assessing any offer (“the relative criterion”)

10.1.2. Since securing the optimum value for property is a key consideration, these guidelines advocate a mix of both absolute and relative criteria, dependent on the value of the properties for disposal.

10.1.3. Detailed criteria should be designed in line with the Guidelines by each SOE.

10.1.4. In order for B-BBEE targets to be met, properties for disposal may be sold on open tender using qualification criteria linked to the value of the property being disposed of. The qualification criteria to be applied must be provided in the tender advertisement.

10.1.5. In all instances, disposals should be guided by criteria which are linked to the value of the property being disposed of (where it is a single property) or the total value of the properties being disposed of as a package. The following value thresholds for all properties for disposal have been set:

- Level A – Up to R5 million
- Level B – Between R5 million and R35 million
- Level C – Between R35 million and R100 million
- Level D – Above R100 million

10.1.6. For each value threshold, bidders (including consortia):

- Must review the content of the guideline document issued by the Department of Trade and Industry entitled Guidelines on Complex Structures & Transactions, and Fronting and satisfy themselves that they are in compliance with that document. (See www.thedti.gov.za/bbee).
- Will be required to present B-BBEE verification certificates issued by a verification agency which is a member of the Association of BEE Verification Agencies (ABVA) or by an auditor that is a member of the South African Institute of Chartered Accountants (SAICA), compliance report or such other evidence of level of compliance as may be stipulated by the applicable SOE in its notice of intention to dispose. Scorecards may be subject to an independent audit or an audit by the SOE in question.
- Must provide proof of ability to fund the acquisition of the property.

- **With a probable transaction value of less than or equal to R5 million (Level A)**
 - In furtherance of the objectives of the B-BBEE Act and the CGP, allowance is made for black individuals wishing to be bidders in respect of Level A disposals. Such individuals must submit a sworn affidavit attesting to the veracity of their status as black individuals and stating that, other than pursuant to good faith financing arrangements, all of the equity in the property will be owned wholly by them without any encumbrances. Those black individuals may then be considered to have a BEE status of Level 1.
 - Bidders with a turnover less than or equal to R5 million are deemed to be Exempted Micro Enterprises (EME) in terms of the Codes of Good Practice (CGP) and are not required to prove BEE compliance. Provided proof of annual turnover is shown to be less than or equal to R5 million, EME are deemed Level 4 contributors to BEE, regardless of black ownership, and Level 3 contributors if it is demonstrated that black ownership exceeds 50%. Accordingly, bidders qualifying as EME must submit a certificate evidencing EME status and, where applicable, evidence of black ownership in excess of 50%.
 - Bidders with a turnover of between R5 million and R35 million are eligible for measurement as Qualifying Small Enterprises (QSE). A QSE must prove its annual turnover and must select any four of the seven elements of B-BBEE for measurement under the QSE scorecard. Accordingly, bidders qualifying as QSE must submit a certified QSE Scorecard or a compliance report.
 - Bidders with a turnover greater than R35 million are required to use the Generic Scorecard.
 - Bidders must be enterprises which have a BEE status level of at least 4 ($\geq 65\%$ on a scorecard).
- **With a probable transaction value of between R5 million and R35 million (Level B)**
 - Bidders with a turnover less than or equal to R5 million must be measured using the scorecard for QSE if they wish to be considered, notwithstanding status as EME in terms of the CGP. Accordingly, bidders qualifying as EME must submit a certified QSE Scorecard or compliance report.
 - Bidders with a turnover of between R5 million and R35 million are eligible for measurement as QSE. A QSE must prove its annual turnover and must select any four of the seven elements of B-BBEE for measurement under the QSE scorecard. Accordingly, bidders qualifying as QSE must submit a certified QSE Scorecard or a compliance report.
 - Bidders with turnover greater than R35 million are required to use the Generic Scorecard.

- Bidders must be enterprises which have a BEE status level of at least 4 ($\geq 65\%$ on a scorecard).
- **With a probable transaction value of between R35 million or more (Levels C and D):**
 - Bidders with a turnover less than or equal to R35 million must be measured using the Generic Scorecard if they wish to be considered, notwithstanding status as EME or QSE in terms of the CGP. Accordingly, bidders qualifying as EME or QSE must submit a full Generic Scorecard or a compliance report.
 - Bidders with turnover greater than R35 million are required to use the Generic Scorecard.
 - In the case of Level C, bidders must be enterprises which have a BEE status level of at least 5 ($\geq 55\%$ on a scorecard).
 - In the case of Level D, bidders must be enterprises which have a BEE status level of at least 6 ($\geq 45\%$ on a scorecard).
 - Level D properties hold vast potential and accordingly requests for qualifications (RFQs) (indicative offers) will be called to identify entities that will be allowed to submit formal proposals.

- **Specialised Enterprises (SE)**

SE include the following institutions:

- Public entities and other enterprises wholly owned by an organ of state.
- Companies limited by guarantee.
- Higher education institutions.
- Non-profit organisations.
- Public benefit schemes.
- Section 21 companies.

If a Specialised Enterprise (SE) bids for property, regardless of the transactional value of the property, then the SE scorecard is applicable.

- 10.2. If deemed reasonable and necessary by the SOE, enterprises may be required to meet additional or a modified form of requirements set out above in order to qualify to bid for properties at levels B, C and D, provided that these modified requirements are consistent with these Guidelines as well as with the B-BBEE Act and the CGP.
- 10.3. In the preparation of the requisite scorecards, bidders:
 - 10.3.1. Must, where a full 12 months worth of data is unavailable, use annualised data.
 - 10.3.2. May, in the case of incorporated or unincorporated joint ventures, rely upon consolidated data from each of the joint venture participants, allocated pro-rata to their respective shareholdings or similar interest in the joint venture or upon data consolidated in some other manner, specified by the SOE,

consistent with these Guidelines as well as with the B-BBEE Act and the CGP.

10.4. B-BBEE Status Levels

10.4.1. The following table provides the BEE Status Levels as outlined in the Department of Trade and Industry's gazetted Codes of Good Practice for B-BBEE:

BEE Status	Qualification	Recognition Level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 on the Generic Scorecard	10%
Non-Compliant Contributor	<30 on the Generic Scorecard	0%
EME that are > 50% black owned are promoted to Level 3. All other EME are level 4.		

11. ADJUDICATION CRITERIA

11.1. All companies bidding for assets will need to meet the criteria outlined in the CGP issued in terms of the B-BBEE Act. Any enterprise bidding for SOE property will need to supply a B-BBEE verification certificate from an accredited verification agency. Alternatively and/or until such time as SANAS accreditation of BEE verification agencies has taken place, bidders must provide evidence of their level of compliance with the CGP in the manner specified by the applicable SOE which may range from a self-assessment under oath using the DPE self-assessment toolkit to a compliance report or certificate issued by a verification agency or an auditor that is a member of SAICA or a BEE consultant. The DPE self-assessment toolkit is available on the DPE website. Enterprises will have to demonstrate that their BEE status has been measured against the relevant dti B-BBEE Scorecard (indicated in Annexures 1-3) and accordingly allocated a BEE Status Level.

11.2. All bids which meet the qualification criteria will be adjudicated on the following basis:

Price	60-80 points
Functionality	0-20 points
B-BBEE	20 points
Maximum points	100 points

11.3. B-BBEE Bid Adjudication Points

11.3.1. B-BBEE points will be allocated using pre-determined B-BBEE Status Level determinations as indicated below:

Level	B-BBEE Adjudication Points
1	20
2	17
3	14
4	11
5	9
6	6
7	3

11.4. Functionality

11.4.1. SOE may set the following additional adjudication criteria (at all levels) for local economic benefit if they deem this to be a priority, as part of the functionality criteria discussed below.

11.4.2. Functionality relates to the use of the property in support of a specific disposal objective and accrues a maximum of 20 points. The breakdown may include, but not be limited to social objectives; local benefit and urban renewal considerations.

11.4.3. The following is therefore proposed:

- For property sales below R35m, at least 25% of the economic interest must be held by people from the local area.
- For property sales above R35m at least 25% of the economic interest must be held by people from the province.

11.4.4. The allocation of points between price, functionality and B-BBEE should be disclosed in the tender advertisement or in the tender documentation.

12. ADDITIONAL MEASURES

12.1. Successful B-BBEE outcomes are not only derived from setting overall targets or incorporating BEE into the adjudication criteria. Each SOE should, where feasible implement a number of other measures around BEE.

12.2. These include:

12.2.1. Extensive promotion and effective and accessible advertising of property opportunities, such as notices in tender bulletins and in local newspapers. In all cases, sufficient time must be given to interested parties to comply with the required criteria.

12.2.2. DPE will place the guidelines on its website (www.dpe.gov.za).

- 12.2.3. Reversionary clauses against title deeds, which provide for ownership to revert to SOE should the property not be utilised for the stated purpose, especially where property is sold with a substantial discount or where development and other socio-economic objectives are incorporated and not fulfilled. Alternatively penalties may be imposed for onward sale at a profit within specified periods of time.
- 12.2.4. Where an immovable asset is to be sold or let for socio-economic purposes at less than market value, suitable restrictions regarding the utilisation and disposal or sub-letting of the asset, as well as the timeframes within which the intended utilisation or development of the asset is to be implemented, should be considered.

13. COMPLIANCE

- 13.1. Any contravention of the terms and conditions of the Policy by an employee of the SOE will be considered to be misconduct, and shall be dealt with in terms of the disciplinary code and procedures of that custodian.
- 13.2. DPE and/or the relevant SOE shall take action against a party to whom assets were disposed of in preference to others as a result of fraud, bribery or any other irregular conduct by such a party.
- 13.3. Penalties and remedies available to the DPE/SOE in situations referred to above include, but are not limited to:
- (a) Exclusion of such party from future participation in disposal processes.
 - (b) Nullification of the disposal and claim for any damages and or financial penalties as a result of having to make less favourable arrangements.
 - (c) Blacklisting from all government procurement opportunities.
 - (d) Civil action.
- 13.4. All SOE must be committed to improving good governance by implementing measures to detect and combat fraud, corruption, favouritism and unfair or irregular practices in the disposal of immovable assets.
- 13.5. All officials involved in the disposal of State-owned assets must uphold a standard of behaviour that is based on:
- 13.5.1. Transparency, equity, fairness, competitiveness and value for money.
 - 13.5.2. The highest levels of transparency, honesty and professional competence.
 - 13.5.3. Non-disclosure of confidential information.
 - 13.5.4. Avoidance of conflict of interest, or the appearance of conflict of interest or any perception of bias. Officials must declare their own interest in any situation in which a conflict of interest may arise.
 - 13.5.5. Refusal to accept gratuities, favours, or anything of monetary or other value from vendors or contractors, potential contractors, or parties to sub-contracts, that have an interest in the disposal of State immovable assets.

14. REVIEW AND EVALUATION

- 14.1. The Policy and B-BBEE Guidelines may be reviewed at DPE's discretion.

15. MONITORING AND REPORTING

- 15.1. Each SOE should report quarterly to the DPE on performance against the target. The DPE will monitor the implementation of the Policy and Guidelines and compile a consolidated annual report on the disposal of assets evaluating the achievement of its objectives. The report shall be submitted to the National Treasury (according to Treasury Regulations).
- 15.2. SOE should report quarterly en bloc on the property disposals. Reporting should include information on the following:
- The value attained for property disposals.
 - The number of properties sold, percentage this represents out of the total non-core portfolio as well as size (in hectares) and national distribution.
 - Performance in respect of B-BBEE Guidelines target including a brief assessment of B-BBEE bidder compliance and the extent of local impact i.e. the extent to which provincial and local benefit has been promoted in line with the Guidelines.
 - Where applicable, outline where functionality has been used to promote specific land use or developmental outcomes.

16. DEFINITIONS

- 16.1. “Accredited verification agency”: an enterprise that has been accredited by SANAS or any other body authorised by the Minister of Trade and Industry to undertake accreditation of verification agencies, on behalf of the Department of Trade and Industry (dti), who meet the minimum technical and black economic empowerment criteria for verification agencies and whose main role is to provide an independent opinion on the B-BBEE status of an enterprise.
- 16.2. “B-BBEE enterprise”: An enterprise whose B-BBEE score in terms of a sector scorecard which has been issued as a Code of Practice or in terms of the dti’s Generic Scorecard is greater than or equal to 30% and has been verified by an accredited verification agency.
- 16.3. “B-BBEE Scorecard”: According to dti, a scorecard for the measurement of Broad-Based Black Economic Empowerment for a particular enterprise as set out in the charter.
- 16.4. “Black people”: In accordance with the B-BBEE Act No 53 of 2003 means Africans, Coloureds and Indians. Reference should also be made to the definition contained in the dti Codes of Good Practice.
- 16.5. “Broad-Based Black Economic Empowerment (B-BBEE)” means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to:
- Increasing the number of black people that manage, own and control enterprises and productive assets.
 - Facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises.
 - Human resource and skills development.
 - Achieving equitable representation in all occupational categories and levels in the workforce.
 - Preferential procurement.
 - Investment in enterprises that are owned or managed by black people.

- 16.6. "Enterprise": the person(s) conducting a business, trade or profession in the Republic of South Africa.
- 16.7. "Generic scorecard": The balanced B-BBEE scorecard include in Code 000, Statement 000 of the dti Codes of Good Practice.
- 16.8. "Joint venture": normally unincorporated bodies, regarded in law as partnerships in which the partners are jointly and severally liable for the acts, neglects and omissions of the partnership. A joint venture is a venture normally formed ad-hoc for a specific project, in which two or more parties share the obligations, risks and rewards.
- 16.9. "Disposal". Refers to the sale, exchange or donation of SOE property (including the allocation of SOE property free of charge for a period of time); the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of SOE property. In this document, disposal refers to the permanent or temporary alienation of immovable assets, which includes but is not limited to sale, exchange and other rights relating to immovable assets (e.g. servitudes).
- 16.10. "Local area": The area surrounding the property to be disposed of within a radius of 100 kilometres.
- 16.11. "SANAS": South African National Accreditation System.

APPENDIX 1: THE GENERIC SCORECARD – GAZETTED FEBRUARY 2007

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	
Ownership	20	Exercisable Voting Rights by black people	3	25% + 1 vote	
		Exercisable Voting Rights by black women	2	10%	
		Economic Interest in the Enterprise to which Black people are entitled	4	25%	
		Economic Interest in the Enterprise to which Black women are entitled	2	10%	
		Economic Interest of the following black natural people in the Enterprise: <ul style="list-style-type: none"> Black designated groups; Black participants in Employee Ownership Schemes; Black beneficiaries of Broad-based ownership schemes; or Black participants in Co-operatives 	1	2.5%	
		Ownership fulfilment	1	No restrictions	
		Net value	7	10%-yr 1 20%-yr 2 40%-yr 3&4 60%-yr 5&6 80%-yr 7&8 100%-yr 9&10	
		Bonus points: Involvement in the ownership of the Enterprise by Black new entrants Involvement in the ownership of the Enterprise of black participants: <ul style="list-style-type: none"> in Employee Ownership schemes of Broad-based ownership schemes; or Co-operatives 	2 1	10% 10%	
Management Control	10	Exercisable Voting Rights of black Board members using the Adjusted Recognition for Gender	3	50%	
		Black executive directors using the Adjusted recognition for gender	2	50%	
		Black senior top management using the Adjusted recognition for gender	3	40%	
		Black other top management using the Adjusted recognition for gender	2	40%	
		Bonus points: Black Independent Non-executive Board members	1	40%	
Employment Equity	15			Yrs 0-5	Yrs 6-10
		Black Employees with disabilities	2	2%	3%
		Senior Management Black people	5	43%	60%
		Middle Management Black Women	4	63%	40%
		Junior Management Black people	4	68%	80%
		Bonus point for meeting or exceeding the EAP targets in each EE category above	3		

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	
Skills Development ¹	15	Skills development spend on learning programmes specified in the Learning Programmes matrix for black employees as a percentage of leviabale amount using the adjusted recognition for gender	6	3%	
		Skills development spend on learning programmes specified in the Learning Programmes matrix for black employees with disabilities as a percentage of leviabale amount using the adjusted recognition for gender	3	0.3%	
		Number of black employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees using the adjusted recognition for gender	6	5%	
Preferential Procurement ²	20			0-5yr	6-10yr
		BEE procurement spend from all suppliers based on the bee procurement recognition levels as a percentage of total measured procurement spend	12	50%	70%
		BEE procurement spend from qualifying small enterprises or from exempted micro-enterprises based on the applicable bee procurement recognition levels as a percentage of total measured procurement spend	3	10%	15%
		BEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: <ul style="list-style-type: none"> suppliers that are more than 50% black owned regardless of their BEE procurement recognition level; or suppliers that are more than 30% black women owned regardless of their BEE procurement recognition level 	5	15%	20%
Enterprise Development ³	15	Average annual value of all Enterprise Development Contributions and Sector Specific Programmes made by the measured entity as a percentage of the target	15	3% of NPAT	
Socio-economic Development ⁴	5	Average annual value of all Socio-economic Development Contributions made by the measured entity as a percentage of the target	5	1% of NPAT	

¹ The following contributions will be considered for enhanced recognition:

Skill Development spend on which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills Development spend.

Category G Learning Programmes under the Learning Programmes Matrix cannot represent more than 15% of the total value of skills development expenditure.

² The following contributions will be considered for enhanced recognition:

Where goods and services are procured directly from a supplier which is also a recipient of enterprise development contributions all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend.

³ The following contributions will be considered for enhanced recognition:

The full value of Category A Enterprise Development Contributions, adjusted using the Benefit Factor, multiplied by 1.25 is recognisable.

The full value of Category B Enterprise Development Contributions is recognisable.

⁴ The value of Socio-economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people and if it is less than 75% then the value of the contribution made multiplied by the percentage that benefits black people, is recognisable.

APPENDIX 2: THE QSE SCORECARD – GAZETTED FEBRUARY 2007

QSEs choose *only four* of seven elements

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	
Ownership	25	Exercisable Voting Rights by black people	6	25% + 1 vote	
		Economic Interest of black people	9	25%	
		Ownership fulfilment	1	No restrictions	
		Net value	9	10%-yr 1 20%-yr 2 40%-yr 3&4 60%-yr 5&6 80%-yr 7&8 100%-yr 9&10	
		Bonus points:			
		Involvement in the ownership of the Enterprise by black women	2	10%	
		Involvement in the ownership of the Enterprise of black participants in Employee Ownership schemes, Co-operatives, or Broad-based ownership schemes	1	10%	
Management Control	25	Black representation at top management level	25	50.1%	
		Bonus point: Black women representation at top management level	2	25%	
Employment Equity	25			Yrs 0-5	Yrs 6-10
		Black employees who are management as a percentage of all management using adjusted recognition for gender	15	40%	60%
		Black employees as a percentage of all employees using adjusted recognition for gender	10	60%	70%
		Bonus point for meeting or exceeding the EAP targets in each EE category above	2		
Skills Development ⁵	25	Skills development spend on learning programmes for black employees as a percentage of leviabale amount using the adjusted recognition for gender	25	2%	
Preferential Procurement ⁶	25			Yrs 0-5	Yrs 6-10
		BEE procurement spend from all suppliers based on the BEE procurement recognition levels as a percentage of total measured procurement spend	25	40%	50%
Enterprise Development ⁷	25	Average annual value of all qualifying contributions made by the measured entity as a percentage of the target	25	2% of NPAT	
Socio-economic Development ⁸	25	Average annual value of all Socio-economic Development Contributions made by the measured entity as a percentage of the target	25	1% of NPAT	

⁵ The following contributions will be considered for enhanced recognition:

Skill Development spend on which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills Development spend.

Category G Learning Programmes under the Learning Programmes Matrix cannot represent more than 15% of the total value of skills development expenditure.

⁶ The following contributions will be considered for enhanced recognition:

Where goods and services are procured directly from a Supplier which is also a recipient of enterprise development contributions all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend.

⁷ The following contributions will be considered for enhanced recognition:

The full value of Category A Enterprise Development Contributions, adjusted using the Benefit Factor, multiplied by 1.25 is recognisable.

The full value of Category B Enterprise Development Contributions is recognisable.

⁸ The value of Socio-economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people and if it is less than 75% then the value of the contribution made multiplied by the percentage that benefits black people, is recognisable.

APPENDIX 3: THE SCORECARD FOR SPECIALISED ENTERPRISES– GAZETTED FEBRUARY 2007

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	
Management Control	15	Exercisable Voting Rights of black Board members using the Adjusted Recognition for Gender	4.5	50%	
		Black executive directors using the Adjusted recognition for gender	3	50%	
		Black senior top management using the Adjusted recognition for gender	4.5	40%	
		Black other top management using the Adjusted recognition for gender	3	40%	
		Bonus points: Black Independent Non-executive Board members	1	40%	
Employment Equity	15			Yrs 0-5	Yrs 6-10
		Black Employees with disabilities	2	2%	3%
		Senior Management Black people	5	43%	60%
		Middle Management Black Women	4	63%	40%
		Junior Management Black people	4	68%	80%
		Bonus point for meeting or exceeding the EAP targets in each EE category above	3		
Skills Development ⁹	20	Skills development spend on learning programmes specified in the Learning Programmes matrix for black employees as a percentage of leviabale amount using the adjusted recognition for gender	8	3%	
		Skills development spend on learning programmes specified in the Learning Programmes matrix for black employees with disabilities as a percentage of leviabale amount using the adjusted recognition for gender	4	0.3%	
		Number of black employees participating in Learnerships or Category B, C and D Programmes as a percentage of total employees using the adjusted recognition for gender	8	5%	
Preferential Procurement ¹⁰	20			0-5yr	6-10yr
		BEE procurement spend from all suppliers based on the bee procurement recognition levels as a percentage of total measured procurement spend	12	50%	70%
		BEE procurement spend from qualifying small enterprises or from exempted micro-enterprises based on the applicable bee procurement recognition levels as a percentage of total measured procurement spend	3	10%	15%

⁹ The following contributions will be considered for enhanced recognition:

Skill Development spend on which is related to an ABET program may be recognised at a multiple of 1.25 to the actual level of such Skills Development spend.

Category G Learning Programmes under the Learning Programmes Matrix cannot represent more than 15% of the total value of skills development expenditure.

¹⁰ The following contributions will be considered for enhanced recognition:

Where goods and services are procured directly from a supplier which is also a recipient of enterprise development contributions all BEE Procurement Spend from that Supplier shall be multiplied by a factor of 1.2 when calculating the BEE Procurement Spend.

BEE elements	Weighting	Indicators	Indicator Weighting	Targets	
		BEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: <ul style="list-style-type: none"> suppliers that are more than 50% black owned regardless of their BEE procurement recognition level; or suppliers that are more than 30% black women owned regardless of their BEE procurement recognition level 	5	15%	20%
Enterprise Development ¹¹	15	Average annual value of all Enterprise Development Contributions and Sector Specific Programmes made by the measured entity as a percentage of the target	15	3% of NPAT	
Socio-economic Development ¹²	15	Average annual value of all Socio-economic Development Contributions made by the measured entity as a percentage of the target	15	1% of NPAT	

¹¹ The following contributions will be considered for enhanced recognition:
 The full value of Category A Enterprise Development Contributions, adjusted using the Benefit Factor, multiplied by 1.25 is recognisable.

The full value of Category B Enterprise Development Contributions is recognisable.

¹² The value of Socio-economic Development Contributions made to beneficiaries is recognisable if at least 75% of the value directly benefits black people and if it is less than 75% then the value of the contribution made multiplied by the percentage that benefits black people, is recognisable.