

# **Broad-based BEE and the PPPFA**

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# Relevant legislation

- The Constitution of the Republic of South Africa (1996)
- Preferential Procurement Policy Framework Act (2000) – PPPFA  
– and accompanying regulations
- Broad-Based Black Economic Empowerment Act (2003)

# 2011 PPPFA regulations

- Gazetted 6 June, 2011
- Come into effect 7 Dec, 2011
- Differentiates between local and imported content
- BEE scorecards required for preference points
- Must be read in conjunction with the PPPFA

# PPPFA Applicability

- Schedules 2 and 3 of the PFMA
- Organ of state
  - a national or provincial department defined in the PFMA
  - a municipality
  - a constitutional institution defined in the PFMA
  - Parliament
  - a provincial legislature

# Preference points

- Constitutional initiative to redress past imbalance
- State is willing to pay a premium for empowerment
  - 25% for 80/20
  - 11% for 90/10

# Preference points (2001)

- HDSA and RDP criteria
- Section 2 of the Act prescribes the 90/10 and 80/20 principles
  - 80/20 for contracts between R30,000 and R500,000
  - 90/10 for contracts in excess of R500,000

# HDI (2001 regulations)

- Historically Disadvantaged Individual (HDI) means a South African citizen –
  - who had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 or the Constitution of the Republic of South Africa, 1993 and / or
  - who is a female; and / or
  - who has a disability:

# 2011 regulations

- Scorecards are the single measure for preference points
- HDSA and RDP criteria removed
- Goods, services or works
  - 80/20 between R30,000 and R1,000,000
  - 90/10 in excess of R1,000,000



# BEE scorecards

- Relevant scorecard issued under section 9(1) of BEE Act
  - allows for charters and other verification authorities
- Does not measure black ownership
- Appears that listed companies may submit a BEE scorecard for preference points

# B-BBEE score and preference points

| <b>Contributor Level</b>                 | <b>90/10</b> | <b>80/20</b> |
|--|--------------|--------------|
| Level 1 Contributor ( $\geq 100$ )       | 10           | 20           |
| Level 2 Contributor ( $\geq 85 - < 99$ ) | 9            | 18           |
| Level 3 Contributor ( $\geq 75 - < 85$ ) | 8            | 16           |
| Level 4 Contributor ( $\geq 65 - < 75$ ) | 5            | 12           |
| Level 5 Contributor ( $\geq 55 - < 65$ ) | 4            | 8            |
| Level 6 Contributor ( $\geq 45 - < 55$ ) | 3            | 6            |
| Level 7 Contributor ( $\geq 40 - < 45$ ) | 2            | 4            |
| Level 8 Contributor ( $\geq 30 - < 40$ ) | 1            | 2            |
| Non-Compliant Contributor                | 0            | 0            |

# 2011 regulations

- Consortia should submit their joint BEE status
  - incorporated or unincorporated
  - feature of PPP bids
- Subcontractors should have the same score or higher than primary
  - bid documents will probe this

# Local production and content

- Allows for tenders that specify local content
- Local content falls within functionality or price
  - not preference points
- Anti-blackwashing clause (11[10])
  - prohibits outsourcing to subcontractors who might import thereby reducing the local content percentage

# Thank you

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