



# UNIVERSITY OF WESTERN CAPE (UWC)

## BROAD BASED BLACK ECONOMIC EMPOWERMENT POLICY: PROCUREMENT

DATE OF LAST APPROVAL: C2008/4

**Affirmative Procurement Policy was repealed at Council Meeting 2004/5  
And replaced by the Broad Based Black Economic Empowerment Policy: Procurement  
(C2008/4)**



UNIVERSITY OF WESTERN CAPE

IC ANNEX 2008/4/1(a)

## **THE UNIVERSITY OF THE WESTERN CAPE**

**BROAD-BASED BLACK ECONOMIC EMPOWERMENT POLICY:  
PROCUREMENT**

**POLICY NUMBER**

**FINANCE/PRC/002**

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## BLACK ECONOMIC EMPOWERMENT POLICY

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## PART A

### GENERAL PRINCIPLES

#### 1 POLICY STATEMENT

- 1.1 The University of the Western Cape ("**University**") acknowledges and recognises that -
- 1.1.1 despite the advent of democracy and a non-racial government in South Africa during 1994, economic, social and other inequalities and hardship continue to exist in South Africa;
- 1.1.2 the majority of South Africans remain excluded from participating in economic opportunities and the ownership, control and management of businesses;
- 1.1.3 the Constitution of the Republic of South Africa Act 108 of 1996 states *inter alia* in section 9 thereof, the imperative of redressing the historical and social inequalities in South Africa;
- 1.1.4 the Broad-Based Black Economic Empowerment Act No 53 of 2003 ("**B-BBEE Act**") establishes the legislative paradigm within which the advancement and empowerment of Black Persons will occur in South Africa. In particular, the B-BBEE Act states in section 2(a) thereof that one of the objectives of the B-BBEE Act are to facilitate Broad-Based Black Economic Empowerment by promoting economic transformation in order to enable the meaningful participation of Black People in the economy;
- 1.1.5 the Codes of Good Practice issued in terms of section 9(1) of the B-BBEE Act ("**Codes of Good Practice**") are designed to achieve the principles and objectives of the B-BBEE Act;

- 1.1.6 Transformation Charters (known also as Sector Charters) exist in respect of certain economic and industrial sectors of South Africa ("**Sector Charters**"), which are similarly designed to achieve the principles and objectives of the B-BBEE Act.
- 1.2 The purpose of this Policy is to set out the principles, norms, standards and other requirements of the University that will ensure that the University -
- 1.2.1 contributes to and complies with the principles and objectives of Broad-Based Black Economic Empowerment as contained in the B-BBEE Act, the Codes, the Sector Charters and the Preferential Procurement Act;
- 1.2.2 creates economic opportunities for Black Persons to sell Goods or Services to the University;
- 1.2.3 procures Goods or Services from Black Persons and Non-Black Persons in a manner that is fair, equitable, transparent, competitive and cost-effective as contemplated in section 217 of the Constitution;
- 1.2.4 secures transactions that will realize the best value for money, minimize risk and safeguard the University's interests whilst creating economic opportunities for Black Persons to transact with the University.
- 1.3 Any conduct of office bearers, officials, or Employees who compromise or violate the terms and conditions set out in this Policy could significantly damage or hinder the University's strategy and tactics that are designed to enhance Broad-based Black Economic Empowerment.

## **2 DEFINITIONS**

In this Policy, unless otherwise indicated by the context, the following terms shall have the meaning ascribed to them -

- 2.1 **"Adjudication Criteria"** means the criteria that is to be used by the University to adjudicate or judge Tenderers, Suppliers or Preferred Suppliers who participate in a Non-tender Process or a Tender Process, as set out in the Procurement Policy;
- 2.2 **"Agents"** means Persons whose services are retained as agents for and on behalf of the University;
- 2.3 **"Appendices"** means the appendices annexed to this Policy, it being recorded that in the event that the Legislature amends or repeals and replaces any of the Appendices, the Appendices annexed to this Policy shall be automatically replaced with the amended or new appendices, as the case may be;
- 2.4 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act No 53 of 2003 as amended;
- 2.5 **"B-BBEE Compliant"** means compliance by a Tenderer, Supplier or Preferred Supplier with the **B-BBEE Act**, the Codes of Good Practice, the Sector Charters (if applicable) and the provisions of this Policy;
- 2.6 **"Black People"** is a generic term which means Africans, Coloureds and Indians, qualified as including only natural persons who are citizens of South Africa by birth or decent or are citizens of South Africa by naturalisation -
- 2.6.1 occurring before the commencement date of the Constitution; or
- 2.6.2 occurring after the commencement date of the Constitution but who, without the apartheid policy would have qualified for naturalisation before then;
- 2.7 **"B-BBEE Policy" or "Policy"** means the Broad-Based Black Economic Empowerment Policy of the University as set out in this document:
- 2.8 **"B-BBEE" or "Broad-Based Black Economic Empowerment"** 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 -

- 2.8.1 increasing the number of Black People that manage, own, and control enterprises and productive assets;
- 2.8.2 facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
- 2.8.3 human resource and skills development;
- 2.8.4 achieving equitable representation in all occupational categories and levels in the workforce;
- 2.8.5 preferential procurement; and
- 2.8.6 investment in enterprises that are owned or managed by Black People;
- 2.9 **"B-BBEE Controlled Company/ies"** means a juristic person having a shareholding or similar member's interest in which black participants enjoy a right to Exercisable Voting Rights that is more than 50% (fifty percent) of the total such rights measured using the Flow Through Principle (as defined in the Codes of Good Practice);
- 2.10 **"B-BBEE Owned Company/ies"** means a juristic person, having a shareholding or member's interest, that is BEE controlled, in which black participants enjoy a right to Economic Interests that is more than 50% (fifty percent) of the total such rights measured using the Flow Through Principle (as defined in the Codes of Good Practice);
- 2.11 **"Business Day"** means a day which is not a Saturday, Sunday or public holiday;

- 2.12 **"Codes of Good Practice"** means the Codes of Good Practice on Black Economic Empowerment published in General Notice 112 in Government Gazette 29617, dated 9 February 2007;
- 2.13 **"Constitution"** means the Constitution of the Republic of South Africa Act No 108 of 1996 as amended;
- 2.14 **"Council"** means the Council of the University of the Western Cape as appointed in terms of section 27(1) of the Higher Education Act, to govern the University, subject to the provisions of the Higher Education Act and the Institutional Statute, or its successor-in-title;
- 2.15 **"Department"** means a department of the University;
- 2.16 **"Directors"** means natural persons who are employed by the University in the capacity 'Director', which includes both Executive Directors and Directors of the University;
- 2.17 **"Economic Interest"** means a claim against an Entity representing a return on ownership of the Entity similar in nature to a dividend right, measured using the Flow Through Principle (as defined in the Codes of Good Practice) and, where applicable, the Modified Flow Through Principle (as defined in the Codes of Good Practice);
- 2.18 **"Employee/s"** means a Person/s employed by the University;
- 2.19 **"Exercisable Voting Right"** means a voting right of a participant that is not subject to any limit;
- 2.20 **"Faculty"** means an academic faculty of the University;
- 2.21 **"Financial Year"** means the period of twelve months that constitutes the accounting cycle of the University commencing on 1 January of each year and ending on 31 December of each year;
- 2.22 **"Goods"** means consumable and non-consumable goods including, but not limited to, capital goods such as office furniture, equipment and immovable equipment;



- 2.23 **"Higher Education Act"** means the Higher Education Act No 101 of 1997 as amended;
- 2.24 **"Institutional Statute"** means the Institutional Statute of the University made by the Council in terms of section 32 of the Higher Education Act;
- 2.25 **"Invitation to Tender"** means the invitation issued by the University to third parties to submit Tender Responses, as contemplated in clause 13.8 of the Procurement Policy;
- 2.26 **"Measured Entity"** means an entity as well as an organ of state or public entity that is subject to measurement under the Codes of Good Practice;
- 2.27 **"Non-tender Process"** means the process followed by the University to purchase Goods or Services from Suppliers, where such purchase is -
- 2.27.1 based on quotations furnished to the University as contemplated in clause 10 of the Procurement Policy; and
- 2.27.2 not based on a Tender Process,
- as contemplated in clause 2.30 of the Procurement Policy;
- 2.28 **"Officers"** means Persons who are employed by the University in the capacity 'Officer';
- 2.29 **"Person"** means any natural person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality, as the context may require;
- 2.30 **"Preferential Procurement Act"** means the Preferential Procurement Policy Framework Act No 5 of 2000 as amended;
- 2.31 **"Preferred Supplier/s"** means a Supplier/s that is/are listed on the Suppliers List and who enjoy first preference over other Suppliers not listed on the Suppliers List, to sell Goods and/or Services to the University;

- 2.32 **"Procurement Legislation"** means all legislation that governs and regulates the procurement by the University of Goods and Services, as set out in the Procurement Policy;
- 2.33 **"Procurement Policy"** means the Procurement and Tender Policy of the University as adopted and approved of by the Council on 19 March 2008;
- 2.34 **"Quotation"** means the purchase price and, if applicable, the accompanying terms and conditions, furnished by a Tenderer, Supplier or Preferred Supplier to the University in respect of Goods or Services to be sold to and purchased by the University;
- 2.35 **"Restricted Funds"** means funds received by the University from a third party **in** terms of an agreement or contract between such party and the University (or any of its Faculties, Departments, Employees or researchers) and which have conditions, restrictions or limitations imposed upon and attached to the manner **in** which those funds may be disbursed or spent;
- 2.36 **"Sector Charters"** shall have the meaning ascribed thereto in 1.1.6 above;
- 2.37 **"Supplier"** means an existing or potential Supplier of Goods or Services and shall include individuals, close corporations, trusts, co-operatives and/or companies and which is or may be appointed by the University to sell and deliver Goods or Services to the University from time to time, whether pursuant to a Non-tender Process or a Tender Process;
- 2.38 **"Tender/s"** means the process by which the University invites a third party/ies to present a proposal/s to the University for the purchase by the University of Goods or Services from such third party/ies, and thereafter the University adjudicates such proposals (whether such adjudication occurs by the University, the Tender Committee or any of its duly appointed structures and/or Persons) resulting in the appointment of a Supplier/s to sell and deliver Goods or Services to the University;

- 2.39 **"Tenderer/s"** means the Person who or which submits a Tender Response;
- 2.40 **"Tender Committee"** means the Tender Committee of the University established and constituted in terms of section 29(1) of the Higher Education Act, as a sub-committee of the Council;
- 2.41 **"Tender Process"** means the process followed by the University in relation to the issue and adjudication of a Tender;
- 2.42 **"Tender Response"** means the written response submitted by Tenderers or Suppliers to an Invitation to Tender, in terms of which the Tenderers or Suppliers offer to sell Goods or Services to the University;
- 2.43 **"University"** means the University of the Western Cape, a public higher educational institution, deemed to be established in terms of the Higher Education Act.

### **3 INTRODUCTION**

- 3.1 The University is a public higher education institution established and constituted in terms of the Higher Education Act
- 3.2 The University requires Goods and Services throughout its Financial Year in order to sustain its teaching and related activities.
- 3.3 The purchase by the University of Goods and Services is governed and regulated by Procurement Legislation and the terms and conditions of the Procurement Policy, which -
- 3.3.1 are designed to ensure sound, sustainable and accountable procurement management within the University at all levels whilst promoting Broad-Based Black Economic Empowerment as a priority for the University;
- 3.3.2 applies to purchases that occur as a result of a Non-tender Process or a Tender Process;

- 3.3.3 applies to all purchases irrespective as to the source of finance or funds thereof;
- 3.3.4 prevails over all other policies of the University from time to time;
- 3.3.5 binds all Departments, Faculties and organizational levels of the University, regardless as to whether such Departments, Faculties and organizational levels are renamed or re-constituted over time.
- 3.4 This B-BBEE Policy is designed to -
  - 3.4.1 contribute to the economic empowerment of Black People through preferential procurement of Goods and Services for the University from Black People;
  - 3.4.2 create the framework to enable the University to measure the compliance by the Tenderers, Suppliers or Preferred Suppliers with the B-BBEE Act, the Codes of Good Practice, the Sector Charters and the Preferential Procurement Act.

## **4 APPLICATION AND COMMENCEMENT**

### **4.1 Application**

- 4.1.1 This Policy applies to the purchase of Goods and Services for and on behalf of the University, including, but not limited to purchases that occur -
  - 4.1.1.1 as a result of a Tender Process;
  - 4.1.1.2 as a result of a Non-tender Process;
  - 4.1.1.3 where such purchase is to be funded from the Restricted Funds or from other sources;
  - 4.1.1.4 in respect of the purchase of *inter alia* construction works services and related consultant services.

- 4.1.2 All Faculties, Departments, Directors, Officers, Employees and Agents of the University shall -
- 4.1.2.1 use the Procurement Policy, the B-BBEE Act, the Codes of Good Practice, the Sector Charters and the Preferential Procurement Act as the basis for the interpretation, application and execution of this Policy;
- 4.1.2.2 interpret, apply and execute this Policy within the framework created by the Procurement Policy, the B-BBEE Act, the Codes of Good Practice, the Sector Charters and the Preferential Procurement Act.
- 4.1.3 This Policy binds all Faculties, Departments, Directors, Officers, Employees and Agents of the University.

#### 4.2 **Commencement**

This Policy shall come into effect on a date to be determined by the Council, from which date all Faculties, Departments, Directors, Officers, Employees and Agents of the University shall observe and comply with the terms and conditions of this Policy.

### **5 POLICY**

- 5.1 It is the Policy of the University that -
- 5.1.1 the Adjudication Criteria set out in clause 20 of the Procurement Policy and the terms of this Policy shall be used congruently to adjudicate all Tenderers and Suppliers who participate in a Non-tender Process or a Tender Process;
- 5.1.2 whilst Tenderers or Suppliers or Preferred Suppliers shall be required to be B-BBEE Compliant, they shall also have the capacity, resources and financial strength to deliver the Goods or Services to be purchased, as contemplated in clause 20.14 of the Procurement Policy;

- 5.1.3 the provisions of the B-BBEE Act, the Codes of Good Practice, the Sector Charters and the Preferential Procurement Act shall be applied at all times when the University or any of its duly authorized sub-structures or Persons embark on a process to procure Goods or Services for and on behalf of the University;
- 5.1.4 accordingly, preference shall be given to purchasing Goods or Services from Tenderers, Suppliers or Preferred Suppliers who are Black People or who are 8-BBEE Controlled Companies and who are B-BBEE Owned Companies, whether the purchase occurs as a result of a Non-tender Process or a Tender Process;
- 5.1.5 the fundamental principle for measuring B-BBEE compliance is that substance takes precedence over legal form;
- 5.1.6 any misrepresentation or attempt to misrepresent any Tenderer's or Supplier's or Preferred Supplier's true 8-BBEE status shall lead to a disqualification of that Tenderer or Supplier or Preferred Supplier from the University's procurement process;
- 5.1.7 any representation made by a Tenderer or Supplier about its B-BBEE status shall be supported by suitable documentation or evidence or as specified or as requested by the University from time to time. A Tenderer or Supplier or Preferred Supplier that does not supply documentation or evidence supporting any B-BBEE initiative shall receive no recognition, whether during adjudication, scoring or otherwise, for such B-BBEE initiative;
- 5.1.8 all Tenderers, Suppliers or Preferred Suppliers who wish to transact with the University shall be measured as to their B-BBEE status prior to the appointment or selection of such Tenderers, Suppliers or Preferred Suppliers to sell Goods or Services to the University.

## **6 EVALUATION OF QUOTATIONS AND TENDER RESPONSES IN RESPECT OF COMPLIANCE WITH THE 8-BBEE ACT, THE CODES OF GOOD PRACTICE, THE SECTOR CHARTERS AND THE PREFERENTIAL PROCUREMENT ACT**

6.1 All Quotations and Tender Responses shall be evaluated for purposes of measuring the B-BBEE Compliance of the Tenderers, Suppliers or Preferred Suppliers who submitted such Quotations and Tender Responses by applying the -

6.1.1 B-BBEE Act, the Codes of Good Practice, the Sector Charters and the Preferential Procurement Act using the principles, rules and scorecards set out in the Codes of Good Practice, the relevant Sector Charters and the Preferential Procurement Act;

6.1.2 the principles, rules and formulae set out in the Preferential Procurement Act, Regulations and the 80/20 preference point system and the 90/10 preference point system set out in Appendix 3.

6.2 In the interests of clarity, all other aspects of Quotations and Tender Responses shall be evaluated in accordance with the relevant provisions of the Procurement Policy and the Procurement Legislation, as may be applicable.

## **7 CONCLUSION**

7.1 The terms and conditions of this Policy shall be applied with consistency and diligence at all levels of the University and in accordance with the B-BBEE Act, the Codes of Good Practice, the Sector Charters, the Preferential Procurement Act and the Procurement Policy.

7.2 Where relevant, the appropriate criteria, formulae and scorecards as set out in the Codes of Good Practice shall be used.

## APPENDIX 1

### GENERIC SCORECARD

(To be used by the University when evaluating the B-BBEE Compliance of Tenderers, Suppliers and Preferred Suppliers)

<b>Element</b>	<b>Weighting</b>	<b>Code Series Reference</b>
Ownership	20 points	100
Management control	10 points	200
Employment equity	15 points	300
Skills development	15 points	400
Preferential procurement	20 points	500
Enterprise Development	15 points	600
Socio-Economic Development initiative	5 points	700

Based on the overall performance of a Measured Entity using the Generic Scorecard it receives one of the following 8-BBEE Status -

<b>B-BBEE Status</b>	<b>Qualification</b>	<b>B-BBEE recognition level</b>
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%



## **APPENDIX 2**

### **QUALIFYING SMALL ENTERPRISES SCORECARD**

(To be used by the University when evaluating the 6-BBEE Compliance of  
Tenderers, Suppliers and Preferred Suppliers)

<b>Element</b>	<b>Weighting</b>	<b>Code Series 800</b>
Framework		800
Ownership	25 points	801
Management Control	25 points	802
Employment Equity	25 points	803
Skills Development	25 points	804
Preferential Procurement	25 points	805
Enterprise Development	25 points	806
Socio-Economic Development Contributions	25 points	807

**THE 80/20 PREFERENCE POINT SYSTEM AND THE 90/10 PREFERENCE POINT SYSTEM**

**Important Note:** this Appendix shall be interpreted in accordance with the provisions of the Preferential Procurement Act and the Regulations thereto.

**1 The 80/20 Preference Point System**

1.1 The following formula must be used to calculate the points for price in respect of Tenders with a Rand value equal to, or above R30 000.00 (thirty thousand rand) and up to a Rand value of R500 000.00 (five hundred thousand rand). The University may, however, apply this formula for procurement with a value less than R30 000.00 (thirty thousand rand), if and when appropriate -

$$PS = 80 \left[ 1 - \frac{Pt - Pmin}{Pmax - Pmin} \right]$$

Where

Ps = Points scored for price of tender under consideration

Pt = Rand value of offer tender consideration

Pmin = Rand value of lowest acceptable tender

1.2 A maximum of 20 points may be awarded to a Tenderer for being an HDI and/or subcontracting with an HDI and/or achieving any of the specified goals stipulated in Regulation 17 of the Regulations to the Preferential Procurement Act.

- 1.3 The points scored by a Tenderer in respect of the goals contemplated in 1.2 above must be added to the points scored for price.
- 1.4 Only the Tender with the highest number of points scored may be selected.

## 2 The 90/10 Preference Point System

- 2.1 The following formula must be used to calculate the points for price in respect of tenders/procurement with a Rand value above R500 000 00 (five hundred thousand rand) -

$$PS = 90 \left[ 1 - \frac{Pt - P_{min}}{P_{min}} \right]$$

Where

Ps = Points scored for price of tender under consideration

Pt = Rand value of tender under consideration

Pmin = Rand value of lowest acceptable tender

- 2.2 A maximum of 10 points may be awarded to a Tenderer for being an HDI and/or subcontracting with an HDI and/or achieving any of the specified goals stipulated in Regulation 17 of the Regulations to the Preferential Procurement Act.
- 2.3 The points scored by a Tenderer in respect of the goals contemplated in 2.2 above must be added to the points scored for price.
- 2.4 Only the Tender with the highest number of points scored may be selected.