



PREFERENTIAL PROCUREMENT POLICY

1. Overview and Purpose

Mineral Sands Resources (Pty) Ltd (“MSR”), its shareholders and its employees recognise the moral, social and economic reasons for black economic empowerment (“BEE”) to succeed.

This Preferential Procurement Policy is in support of MSR’s overall commitment to the transformation of the South African economy and its people through black economic empowerment.

This Preferential Procurement Policy of MSR is intended to promote Broad-Based Black Economic Empowerment by encouraging increased participation of black business people, particularly women and people with historically disadvantaged disabilities in procurement activities.

This policy document outlines MSR’s Preferential Procurement Policy and is aligned with the following legislative instruments:

- Constitution of the Republic of South Africa.
- Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), as amended.
- The Department of Trade & Industry (DTI’s) Broad-Based Black Economic Empowerment (“B-BBEE”) Generic Codes of Good Practice.

MSR’s Preferential Procurement Policy is the basis of its Preferential Procurement planning and implementation, and is expressed and measured in the terms of Code 500 of the Codes of Good Practice.

This policy is aimed at setting procurement guidelines for MSR, and to outline a process to support and document procurement decisions to ensure implementation of MSR’s preferential procurement programme.

The primary objectives of MSR’s Preferential Procurement Policy are to:

- (a) Validate MSR’s commitment to Preferential Procurement;
- (b) Achieve compliancy with Code 500 of the Codes of Good Practice;
- (c) Encourage MSR’s current non BEE suppliers to become BEE compliant;
- (d) To enhance MSR’s procurement status by encouraging suppliers to become contributors to B-BBEE and to improve their own contribution levels.
- (e) Increase the rand value of procurement-spend towards BEE enterprises;
- (f) Increase the number of BEE Enterprises participating in MSR’s procurement activities; and
- (g) Support MSR’s overall procurement policy, practices and techniques.

In pursuit of this objective, MSR will provide for fair and equitable treatment of all suppliers involved in procurement with MSR.

2. Scope

MSR’s Preferential Procurement Policy applies to all departments within MSR.

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3. Commitments

The following commitments are made by MSR.

- (a) MSR will adopt a supportive culture when engaging and/or doing business with Black Empowered, EME or QSE suppliers.
- (b) MSR will promote an open, fair, consistent, competitive, cost-effective and transparent procurement process.
- (c) MSR will make every procurement opportunity a BEE procurement opportunity and will adopt the spirit of BEE in its procurement activities.
- (d) MSR will not compromise on health, safety, commercial, quality and service standards.
- (e) MSR executives and heads of department are committed to the direction given in this policy.

4. Criteria for Evaluating Suppliers

MSR will use generic criteria for evaluating and awarding business.

These criteria include but are not restricted to: commercial, administrative performance, delivery and cycle time, responsiveness, business management, quality, safety and environment and the highest standards of corporate governance.

In addition, the following hierarchy will be a guide in sourcing products and services:

1. Procurement from existing compulsory contracts.
2. Procurement from Suppliers ranked on their BEE level as defined in the Codes of Good Practice. BEE Level 1 being the highest and BEE Level 8 the lowest ranking.
3. Procurement from Suppliers who qualify under other criteria contained in Code 500 of the Codes of Good Practice. This includes QSE, EME and Black Empowered entities.
4. Procurement from other South African manufacturers.

BEE Suppliers must be price competitive. MSR does not intend to pay a premium to acquire products or services from a BEE Supplier.

A current supplier’s or potential supplier’s BEE status will be evaluated based on a BEE Certificate issued by a BEE Verification Agency or by such other documentation specified in the Codes of Good Practice.

MSR intends to tighten the criteria for qualification as a BEE Supplier over time to meet its increasing Preferential Procurement targets.

Where a supplier has no BEE Status (See Section 7), MSR will seek to find alternative sources of supply.

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5. Supporting Black Suppliers and Strategic Intervention

The following development assistance may be offered to BEE suppliers at MSR discretion for the purpose of establishing long term relationships and a credible BEE supplier base:

• **BEE Enterprises**

A database of BEE enterprises and suppliers shall be established and maintained;

• **BEE Preference**

Applying preference to BEE enterprises and enterprises that promote B-BBEE in the procurement activities of MSR.

Applying preference, in all key strategic aspects of the procurement activities of MSR, to MSR’s BEE Ownership Partner/s and their associated entities i.e. Z Square.

• **Price Preference**

If all other requirements are met, MSR will consider price preference when comparing quotations as defined in the enquiry. Such preference may be in the form of a price matching clause stated in the enquiry.

• **Designated Spend**

Where appropriate, designated spend areas may be set in part or in whole for the exclusive participation of BEE Suppliers based on specific criteria.

• **Payment Cycles**

To alleviate cash flow pressures experienced by smaller suppliers, MSR shall upon receipt of all relevant documentation endeavour to pay Black Owned, Black Empowered and Black Engendered EME and QSE suppliers within, at all times, the standard payment terms of 30 days.

On request, a short payment cycle may be granted after receipt of a valid invoice and proof of delivery or applicable documentation.

• **Skills and Technology Transfer**

Upon request, training may be given in areas such as finance, quality improvement and technical enhancement.

• **Joint Ventures**

Encourage the establishment of value-adding joint ventures between traditional suppliers and BEE Enterprises which give the latter access to the latest skills and technologies;

BEE Suppliers’ performance will be reviewed during the contract or supply period. Any development assistance provided will be for an agreed period, after which the supplier should be capable of doing business with minimum assistance.

6. BEE Status

A supplier will be able to qualify as a BEE Supplier if the following criteria are met:

1. The supplier has a current BEE Certificate or is Black Empowered and obtains a BEE Certificate within three months of the supply contract being signed; and
2. The supplier has the potential and capacity to satisfy MSR’s business requirements.

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Suppliers must comply with the following procedure to be considered as a BEE Supplier:

1. The supplier shall complete, sign and submit the standard MSR's Supplier application and / or BBBEE Questionnaire form/s relevant to the service or product being offered; and
2. The supplier shall submit proof via a BEE Certificate or such other documentation specified in the Codes of Good Practice.

A BEE Supplier's validity assumes that there is no substantial change in the information submitted in the application. In the event of the supplier losing or obtaining a lower BEE status, MSR should be informed in writing within seven working days.

To remain qualified as a BEE supplier, the supplier is required to submit a new BEE certificate immediately upon the expiry of the existing BEE certificate or at the latest within two months thereafter.

A supplier may lose its BEE Supplier status if the supplier has:

- (a) changed to the extent that it no longer qualifies as a BEE Supplier as defined herein;
- (b) failed to submit a BEE Certificate within the two months of the expiry of the previous BEE Certificate; or
- (c) been found to be a Front.

7. Preferential Procurement Scorecard

In terms of activities in the Preferential Procurement element of the scorecard, MSR will calculate its score based on Code series 500 of the applicable Sector Code.

All suppliers to MSR will and are required to submit evidence to MSR to confirm their BEE status. For Large Enterprises this shall be in the form of a valid BEE Certificate produced by a SANAS approved Verification Agency.

For an EME and QSE's sufficient evidence is detailed below. Based on the overall performance of an enterprise using the scorecard, it receives one of the following BBBEE statuses:

BBBEE Status	Qualification	BEE Procurement Recognition level
Level One Contributor	>100 points	135%
Level Two Contributor	>85 but <100 points	125%
Level Three Contributor	>75 but <85 points	110%
Level Four Contributor	>65 but <75 points	100%
Level Five Contributor	>55 but <65 points	80%
Level Six Contributor	>45 but <55 points	60%
Level Seven Contributor	>40 but <45 points	50%
Level Eight Contributor	>30 but <40 points	10%
Non Compliant Contributor	<30 points	0%

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Exempted Micro Enterprises (EME's)

As of the 5th of May 2015 communication from the Department of Trade and Industry confirms the following:

If the business's financial year end is before 30 April 2015 and the business has not yet completed its verification, the business may continue to obtain a verification using the 2007 Codes requirements. However, if the business's financial year end is after 01 May 2015, the business will be required to use the 2013 Codes requirements, unless the Sector Codes are applicable.

If the business is measured under a Sector Code, the business may continue being rated according to that Code as the transition period has been extended to 31 October 2015. New Sector Codes will only be effective from 01 November 2015, which means the current sector codes apply until then.

Therefore an entity can still qualify under the 2007 BEE CoGP and receive a BEE Certificate.

Any enterprise with an annual total revenue of R5 million or less, or is a recently formed or incorporated entity that has been in operation for less than one year (start up enterprise) would qualify as an Exempted Micro Enterprise (EME). EME's are deemed to have B-BBEE Status of "Level 4 Contributor" having a B-BBEE procurement recognition of 100%. If an EME's is more than 50% black owned, it is elevated to have a "Level 3 Contributor" having a B-BBEE procurement recognition of 110%.

More than 50% Black Owned means an entity in which:

- black people hold more than 50% of the exercisable voting rights,
- black people hold more than 50% of the economic interest, and
- has earned all points for Net Value

Should a company prefer to go the affidavit route, according to the amended BEE CoGP 2013, the following applies:

With the new B-BBEE Codes of Good Practice gazetted on 11 October 2013, enterprises with an annual turnover less than R10 million qualify as an Exempted Micro Enterprise (EME) and are exempted from being measured on a BEE scorecard.

Any EME automatically qualifies as follows:

- 100% black owned EME – level 1 BEE status
- 51% or more black owned EME – level 2 status
- Any other EME – level 4 status

Please note an EME for Specialised Enterprises which is 75% or more black owned automatically qualifies as a Level 1 BEE supplier. An EME which is 51% Black Owned automatically qualifies as a Level 2 BEE supplier. Therefore an EME entity of this nature only requires an affidavit in order to state their BEE level and is not required to conduct a full verification.

EME's automatically qualify as Empowering Suppliers so their customers are able to claim BEE points when buying from them.

Under the Amended BEE Codes all businesses have been given the target of buying 15% of total Measured Procurement Spend from EME's each year, thereby increasing the opportunities for growth of EME's in the country.

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An EME does not need a BEE certificate; an EME must however produce an affidavit declaring their turnover is less than R10 million and what their black ownership percentage is.

Qualifying Small Enterprise (QSE)

As of the 5th of May 2015 communication from the Department of Trade and Industry confirms the following:

If the business’s financial year end is before 30 April 2015 and the business has not yet completed its verification, the business may continue to obtain a verification using the 2007 Codes requirements. However, if the business’s financial year end is after 01 May 2015, the business will be required to use the 2013 Codes requirements, unless the Sector Codes are applicable to the business.

If the business is measured under a Sector Code, the business may continue being rated according to that Code as the transition period has been extended to 31 October 2015. New Sector Codes will only be effective from 01 November 2015, which means the current sector codes apply until then.

Therefore an entity can still qualify under the 2007 BEE CoGP and receive a QSE BEE Certificate. Under the 2007 CoGP, a Qualifying Small Enterprise is an entity with an annual turnover between R5 and R35million.

For the amended BEE CoGP 2013, the following applies:

A business with an annual turnover more than R10 million but less than R50 million qualifies as a Qualifying Smaller Enterprise (QSE).

All QSE’s are required to use all 5 elements on the amended BEE Scorecard:

- Ownership
- Management Control
- Skills Development
- Enterprise and Supplier Development
- Socio-Economic Development

A QSE which is 100% or more black owned automatically qualifies as a Level 1 BEE supplier. A QSE which is 51% Black Owned automatically qualifies as a Level 2 BEE supplier. Therefore a QSE entity of this nature only requires an affidavit in order to state their BEE level and is not required to conduct a full verification.

Please note a QSE for Specialised Enterprises which is 75% or more black owned automatically qualifies as a Level 1 BEE supplier. A QSE which is 51% Black Owned automatically qualifies as a Level 2 BEE supplier. Therefore a QSE entity of this nature only requires an affidavit in order to state their BEE level and is not required to conduct a full verification.

QSEs are required to qualify under one of the following criteria in order to receive a QSE certificate;

- At least 25% of costs of sales excluding labour costs and depreciation must be procured from local producers or local supplier in SA (for service industry labour cost are included but capped to 15%)
- 50% of jobs created are for black people provided that the number of black employees since the immediate prior verified B-BBEE measurement is maintained.

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- At least 25% transformation of raw material/beneficiation which include local manufacturing, production and/or assembly, and/or packaging.
- At least spend 12 days per annum of productivity deployed in assisting black EME's and QSE's beneficiaries to increase their operation or financial capacity.
- At least 85% of labour costs should be paid to South African employees by service industry entities.

Note: if a QSE is not an Empowering Supplier, their suppliers will not be able to claim expenditure spent/preferential procurement points with them when getting verified.

The QSE scorecard was gazetted in May 2015. Please refer to page 38 of the government gazette for the scorecard. Please note the additional criteria for Empowering Supplier; kindly refer to page 4 of government gazette 38765.

Value-Adding Supplier/Enterprise

A Value-Adding Supplier (VAS) means an entity registered as a vendor under the Value-Added Tax of 1991 whose Net Profit Before Tax summed with its Total Labour Cost exceeds 25% of the value of its Total Revenue.

A supplier with a VAS status will result in a 1.25 uplift for MSR's procurement reporting purposes.

Where MSR procures from a Black Owned, Black Engendered and/or a QSE or EME supplier, the relevant uplifts according to the applicable Sector Code shall be applied for reporting purposes.

8. Responsibility, Measurement and Reporting

The responsibility for the implementation of this policy rests with the Chief Financial Officer and the General Manager.

Each existing supplier and/or potential supplier will be required to submit proof of their BEE status and it is the responsibility of the supplier to ensure that this information is up to date.

MSR will endeavour to achieve Preferential Procurement targets based on the Code 500 of the Codes of Good Practice. In calculating and reporting the percentage of Preferential Procurement spend, the targets, provisions and formulas in Code 500 of the Codes of Good Practice will be used.

Preferential Procurement Spend in terms of this policy will be measured annually in line with MSR's financial year, with the first measurement date being 31 December 2015.

Effective from 31 December 2015, MSR's Preferential Procurement spend will be recorded and reported half yearly in order to track target value compliance.

All MSR employees who engage directly with suppliers are required to abide by this policy.

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9. Definitions

Term	Definition
ABVA:	Association of BEE (Black Economic Empowerment) Verification Agencies.
B-BBEE	Broad-Based Black Economic Empowerment.
BEE Certificate:	A certificate issued by a BEE Verification Agency validating a supplier's BEE Status.
BEE Level:	A Broad based BEE score as defined in the Codes of Good Practice and validated by a current BEE Certificate or according to the provisions of the Codes of Good Practice.
BEE Status:	An entity's BEE Level or Black Empowered status expressed in terms of the Codes of Good Practice.
BEE Supplier:	Means any supplier who is acceptable to MSR and who has proved their BEE status to the satisfaction of MSR.
BEE Verification Agency:	An agent who is a member of the BEE Industry Body ABVA and / or is accredited by the Government Agency SANAS and appointed by any entity to evaluate its BEE status.
BEE:	Black Economic Empowerment.
Black Empowered:	Any organisation that is owned at least 50% by Black people or 30% by Black women.
Black:	Has the meaning defined in the BEE Act of 2003 (South African Africans, Coloureds and Indians) as qualified by the Codes of Good Practice. It also includes similarly qualified South African Chinese. Naturalised South Africans must have been naturalised prior to 1994.
Codes of Good Practice:	BEE Legislation No. 29617 Gazetted on 9th February, 2007 under Section 9(1) of the Broad-based Economic Empowerment Act, 2003.
Eligible Procurement:	Means all expenditure to acquire goods and/or services including capital expenditure, but excluding procurement spending where there is a natural monopoly, where there is no local supplier or procurement of items where the supplier is imposed in terms of a global policy for technical (but specifically not commercial) reasons, or inter-entity charges for services rendered by other members of the group, or expenditure classes e.g. salaries and wages.
EME:	An Exempt Micro Enterprise as defined in the Codes of Good Practice.
Generic / Large / Standard Enterprise	Shall mean, any enterprise with annual revenue of above R35 million, which shall measure all the seven elements of the B-BBEE scorecard.

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- Front or Fronting:** A term to denote any situation where black ownership structures are an artificial construction that does not reflect true ownership control by the black people concerned.
- MSR:** Mineral Sands Resources (Pty) Ltd.
- Preferential Procurement:** The sourcing of content, goods and services from Black South African persons (as defined by the Department of Labour) who were disadvantaged by unfair discrimination on the basis of race, gender or disability amongst other things, with a view to equalizing market accessibility for them.
- QSE:** A Qualified Small Enterprise as defined in the Codes of Good Practice (A supplier with an annual turnover of less than R35m validated as such by a current BEE Certificate).
- SANSA:** South African National Accreditation System.

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