Implementation of Broad Based Black Economic Empowerment (B-BBEE)
Challenges faced by organs of state

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The Auditor-General of South Africa has a constitutional mandate and, as the Supreme Audit Institution (SAI) of South Africa, it exists to strengthen our country’s democracy by enabling oversight, accountability and governance in the public sector through auditing, thereby building public confidence.
Outline

- Introductory Thoughts
- B-BBEE Act: Reporting Requirements
- Role of AGSA
- Procurement as a key driver of B-BBEE objectives
- What does AGSA audit? (Current Audit Methodology)
- Most common Supply Chain Management (SCM) audit findings and impact to B-BBEE objectives
- Irregular expenditure in supply chain
- Future approach to auditing B-BBEE
- Concluding thoughts
Introductory Thoughts

• SCM is a vehicle to advance the objectives of B-BBEE

• SCM is governed by Preferential Procurement Policy Framework Act (PPPFA) and this presents an opportunity for government to correct the socio-economic imbalances of the past

• PPPFA open opportunities to advance certain categories that have been previously disadvantaged e.g. businesses owned by persons with disabilities, youth, women etc.
B-BBEE Act Reporting Requirements

In terms of the B-BBEE Amendment Act of 2013: Section 13 G (1):

• “All spheres of government, public entities and organs of state must report on their compliance with broad-based black economic empowerment in their audited annual financial statements and Annual reports required under the Public Finance Management Act, 1999 (Act No. 1 of 1999)”

Benefits of mandatory reporting

• Legislation will not only improve compliance but will drive and embed the right behaviours that support transformation in all spheres of government.

• Legislation will also enhance the support of transformation objectives of South Africa i.e. address poverty, unemployment and inequality
Role of AGSA

• Section 28(1)(b) of the Public Audit Act requires the AGSA to audit compliance with any applicable legislation relating to financial matters, financial management and other related matters.

• The AGSA does not audit compliance with B-BBEE legislation at this stage. As a result, challenges experienced by the auditees on B-BBEE are currently not formally included in the audit process.

• The AGSA is working with the DTI to develop an approach for basic assessment of planning and reporting on B-BBEE targets by organs of state.
Section 10(1) of the B-BBEE Act requires that every organ of state must apply relevant codes in, amongst others, implementing the preferential procurement policy.

The PPPF Act (and its regulations) provide various means for organs of state to promote their B-BBEE objectives through preferential procurement. This includes:

• Use of pre-qualification criteria to advance certain designated groups for specific tenders;
• Implementing mandatory subcontracting of contracts to designated groups.
• Normal use of B-BBEE level status in allocating preference points

Successful implementation of pre-qualification criteria and mandatory subcontracting requires a strong base in the form of effective procurement planning that specifically identifies strategic procurement/contracts on which such criteria will be implemented.
This diagram illustrates a traditional approach to procurement where little time is spent on planning.

Reference: Graphic from the National Treasury
This diagram illustrates a strategic approach to procurement. The time taken to plan, research and analyse add significant value to identifying solutions/ procurement strategy that will meet the needs or intended objectives, including B-BBEE objectives.

Reference: Graphic from the National Treasury
What does AGSA audit? (Current Audit Methodology)

AGSA audit procurement and contract management

- The audit of procurement specifically test the application of preference point system in awarding tenders.
- Verify whether the preference points for B-BBEE status level are allocated correctly based on the bidder’s B-BBEE level – as evidenced by a valid B-BBEE certificate or affidavit.
- Rely on the B-BBEE certificates issued by the accredited verification agencies. Indicators of a fraudulent B-BBEE certificate are reported to management of the auditees for them to investigate and take appropriate action.
Most common findings on Supply Chain Management – PFMA 2016-17

- Three written quotations not invited: 26% (104)
- Competitive bidding not invited: 22% (86)
- Preference point system not applied or incorrectly applied: 17% (69)
- Suppliers’ tax affairs not in order: 13% (53)
- Contract amended or extended without approval by a delegated official: 12% (49)
- Inadequate contract performance measures and monitoring: 12% (48)
- Declarations of interest not submitted: 12% (46)

Impact on B-BBEE objectives:
- Limit competition and opportunities for emerging, start-ups and small black owned businesses
- Creates opportunities to appoint suppliers that are not B-BBBEE compliant
- Open opportunities for unethical behaviour and fronting of B-BBEE.
Irregular expenditure over three years

89% (2015-16: 89%) of occurrences were related to contraventions of SCM prescripts.

- **2016-17**: R35 549 m (78%) identified by auditees [67%]
  - Excluding PRASA IE of R13 671 million
- **2015-16**: R21 431 m (73%) identified by auditees [72%]
  - Excluding PRASA IE of R550 million
- **2014-15**: R17 232 m (75%) identified during the audit
  - Excluding PRASA IE of R550 million

- Slow response to improving key controls and addressing risk areas: 85% (230)
- Instability or vacancies in key positions: 54% (147)
- Inadequate consequences for poor performance and transgressions: 39% (105)

Auditing to build public confidence
Future intentions to auditing B-BBEE

- Introduce a **basic assessment** of whether departments have included **BBBEE targets** in their institutional plans and annual reports.

- This will be the 1st **phase** in developing an audit **approach** that will support government’s efforts in relation to B-BBEE.

- This **audit approach** is currently being developed.
Concluding Thoughts

• As AGSA, we recognise that strengthening **oversight, accountability and governance** in the public sector extends beyond auditing **financials**

• It is important to note that significant increase to irregular expenditure is attributed to continued **weaknesses in SCM**. These weaknesses impact the opportunities to advance the objectives of B-BBEE

• Our future intentions to **improve** our audit process in the **B-BBEE** space is driven by the motivation to make **a difference** to the lives of the citizens

• However, we acknowledge that our success relies on **strong collaborations** with key stakeholders such as DTI, B-BBEE commission and auditees.
How to get in touch with the AGSA

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