

Construction industry Development Regulations, 2004 (as amended)
– updated until 18 August 2006-

DEPARTMENT OF PUBLIC WORKS

No.692

9 June 2004

REGULATIONS IN TERMS OF THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD
ACT, 2000 (ACT NO. 38 OF 2000)

The Minister of Public Works has under section 33 of the Construction Industry Development Board Act, 2000, (Act No. 38 of 2000) (the Act), made the regulations set out in the Schedule. These Regulations commence on date of publication but-

- (a) Part III, for a project of which the project value exceeds R200 000.00 and Part IV, in relation to all projects, commence in-
 - (i) the Limpopo Provincial Department of Public Works on 15 October 2004;
 - (ii) the eThekweni Metropolitan Council on 14 January 2005;
 - (iii) the National Department of Public Works (all regions) and every provincial department responsible for public works, roads or transport or any combination thereof, on 30 August 2005;
 - (iv) every provincial department on 30 August 2005;
 - (v) every national department not mentioned above on 30 September 2005;
 - (vi) every public entity on 30 November, 2005;
 - (vii) every metropolitan council not mentioned above on 15 March 2006;
 - (viii) a municipality, which is not a metropolitan council, classified as a high capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 April 2006;
 - (ix) a municipality classified as a medium capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 July 2006;
 - (x) a municipality classified as a low capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 November 2006, and the above organs of state must apply the register of contractors to their procurement processes as contemplated in section 16(4) of the Act from the above dates and in accordance with Part IV of these Regulations; and
- (b) Part III commences in relation to all private sector projects of which the project value exceeds R3 million on 30 August 2005.”

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- *Paragraphs (b), (c) and (d) were amended by Government Notice No. R.1333 of 12 November 2004, published in Government Gazette No. 26991 of 12 November 2004 and commenced on that date.*
- *Notice replaced by Government Notice No. 751 of 22 July 2005 and replacement commenced on that date.*

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Note: Government Notice No. R.1333 of 12 November 2004, published in Government Gazette No. 26991 12 November 2004, Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005 and Government Notice no. 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006, amended these regulations as indicated in the text. The respective amendments came into effect on their respective dates of publication.

SCHEDULE

PART 1 INTERPRETATION

Definitions

1. In these Regulations, unless the context otherwise indicates, every word takes the meaning as defined in the Act, and –

“**approved**” means approved by the Board;

“**code of conduct**” means the code of conduct published by Board Notice No 127 in *Gazette* No. 25656 of 31 October 2003;

“**construction procurement**” means procurement in the construction industry, including the invitation, award and management of contracts;

“**class of construction works**” means a class referred to in Schedule 6;

“**employable capital**” means the liquid cash resources available to a contractor or the amount that a contractor is able to muster as working capital, consisting of bank balances, loans that may be leveraged and any financial sponsorship as calculated in terms of regulation 11(3);

“**employer**” means a person, body of persons or organ of state who enters into a prime contract with a contractor for the provision of construction works;

“**financial sponsorship**” means any financial support from another party that contributes to the value of the applicant’s employable capital;

“**joint venture**” means a grouping of two or more contractors who jointly and severally undertake to perform a construction works contract;

“**NHBRC**” means the National Home Builders Registration Council, established in terms of the Housing Consumers Protection Measures Act, 1998;

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“practical completion certificate” means a certificate issued in terms of a contract by the employer, signifying that the whole of the construction works have reached a state of readiness for occupation or use for the purposes intended, although some minor work may be outstanding;

“prime contract” means a construction works contract that does not form part of the scope of work of another contractor;

“principal” means a natural person who is a partner in a partnership, a sole proprietor, a director in a company or a member of a close corporation;

“programme” means a series of projects aimed collectively at a predefined outcome;

“qualified person” means a person who is recognised by virtue of his or her training and experience as having the necessary qualifications to undertake construction works in a specific category as contemplated in regulation 12(8);

“the Act” means the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000).

Value

2. The rand value, tender value, tendered price, contract value or project value, wherever it appears in these Regulations, includes value added tax levied under the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

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PART II
REGISTER OF CONTRACTORS

Particulars to be contained in register of contractors

3. The register of contractors must, in relation to each contractor registered in terms of these Regulations, reflect-

- (a) the name;
- (b) the category of registration;
- (c) subject to regulation 36(2), the particulars of the contractor submitted together with the application in terms of regulation 7, 8 or 9;
- (d) the fees paid by the contractor in terms of these Regulations;
- (e) any fees owed by that contractor in terms of these Regulations;
- (f) any refund paid to that contractor;
- (g) any investigation in terms of the Act against a contractor which is pending or finalised;
- (h) any restriction to participate in public procurement in terms of legislation regulating procurement of a registered contractor or any principals of that contractor, prohibiting that contractor to submit a tender offer to an organ of state;
- (i) any court finding in terms of regulation 30;
- (j) the suspension of the registration or the deregistration of that contractor or the removal of the name of that contractor from the register.

Exemption

4. (1) Any contractor, who is registered as a homebuilder in terms of the Housing Consumer Protection Measures Act, 1998 is, subject to regulation 15, exempt from registration in terms of these Regulations and the particulars of that contractor may be reflected on the register contemplated in section 15 of the Act, but that contractor is exempt only in the case of construction works in relation to provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998.

(2) A contractor who undertakes a construction works contract substantially consisting of the provision of labour, is exempt from registration in terms of these Regulations.

Regulation substituted by Government Notice 751 of 22 July 2005, published in Government Notice No. 27831 of 22 July 2005.

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Targeted development programmes

5. From the register of contractors, a client may identify potentially emerging contractors within particular contractor grading designations for the purpose of development programmes that target the improvement and progress of contractors.

Categories of registration

6. (1) The categories of registration are determined by:

- (a) the contractor grading designation contemplated in regulation 11;
- (b) the status of a contractor as a potentially emerging enterprise;
- (c) from a date determined by the Minister in the *Gazette*, recognition status in terms of a best practice recognition scheme; and
- (d) from a date determined by the Minister in the *Gazette* the status of recognition of the progress of a contractor in terms of any black economic empowerment programme, and must be reflected by alpha-numerical characters, where the first three characters denote the contractor grading designation and the following characters reflect the status of the contractor referred to in paragraphs (b),(c) and (d).

(2) A contractor may only be registered in a category contemplated in subregulation (1) if that contractor satisfies the requirements for such registration determined in these Regulations.

Application for registration as contractor

7. (1) A contractor who wishes to be registered in terms of these Regulations must on the approved form apply to the Board for registration in a category contemplated in regulation 6.

(2) A contractor must apply to the Board for registration in at least one contractor grading designation.

(3) A contractor may be registered in more than one class of works but may only hold one contractor grading designation in relation to a particular class of construction works.

(4) An application for registration must be accompanied by-

- (a) the fees as shown in Schedule 2;
- (b) if applicable, complete financial statements of the contractor for the two financial years immediately preceding the application, certified by a person who is required by law to certify those financial statements and in a format acceptable to the Board;

Paragraph (b) was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

- (c) if applicable, supporting evidence of such turnover as set out in the South African Revenue Services Form VAT 201 (Return for remittance of value added tax);”
- (d) in the case of a company or a close corporation, the registration number, a certificate

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of incorporation and the latest name change, if any, issued in terms of the Companies Act, 1973 (Act No.61 of 1973) or the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be and certified copies of the shareholders' certificates of the company;

(dA) in the case of a trust, a copy of trust deed as contemplated in the Trust Property Act, 1988 (Act No. 58 of 1988);

Paragraph (dA) was inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

- (e) an original tax clearance certificate issued by the South African Revenue Service;
- (f) certified copies of the identity documents of the principal or principals of the contractor, but where there are more than twenty principals, certified copies of the identity documents of only twenty principals may be submitted;
- (g) if applicable, a schedule of financial sponsorship indicating the nature and value of any such sponsorship and proof thereof;
- (h) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration;
- (i) in the case of an application relating to the class of works “electrical engineering”, a certified copy of the contractor’s electrical contractor licence issued by the Electrical Contracting Board of South Africa;
- (j) if applicable, certified copies of the contractor’s registration certificate issued in terms of the Housing Consumer Protection Measures Act, 1998, (Act No. 95 of 1998) and proof of current payment;
- (k) if a contractor is registered under an emerging contractor development scheme , proof of that registration;
- (l) documentary proof by the employer or his or her representative of contracts completed as contemplated in regulation 11(2)(b) and 11(5)(c) and for the purpose of this paragraph, “completed” means the stage when the construction works have been completed or when the construction works have reached a state of readiness for occupation, or use for the purposes intended, although some minor work may be outstanding; and
- (m) any other information required by the Board in relation to the category of registration of a contractor.

(5) If an application in terms of this regulation is made on the worldwide web, the supporting documentation referred to in subregulation (4) must be submitted to the Board by mail or by hand and the application is not considered to have been duly completed as contemplated in regulation 10(3), until such submission has been received by the Board.

(6) The Board may obtain the tax clearance certificate referred to in subregulation (4)(e) on behalf of the contractor if the contractor authorises the Board to do so.

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(7) The Board must for the purpose of assessing an application for registration and subject to section 30 of the Act, take reasonable steps to verify the information submitted by a contractor in terms of this regulation.

(8) If a contractor does not fully comply with a request from the Board to provide further information in relation to his or her application within 90 days from the date of that request, the Board may cancel the application and must refund the annual fees paid by the contractor.

(9) In the case of an application for registration by a contractor whose supporting documents are not in English, that application must be accompanied by an English translation of those documents, prepared by a sworn translator.

Subregulations (8) and (9) were inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

Application for amendment of category status

8. (1) An application in terms of section 17(2) of the Act to amend the category status of a contractor must, where applicable, be accompanied by-

(a) if applicable, complete financial statements of the contractor for the two financial years immediately preceding the application, certified by a person who is required by law to certify that financial statement and in a format acceptable to the Board;

Paragraph (a) was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(b) if applicable, supporting evidence of such turnover as set out in the South African Revenue Services Form VAT 201 (Return for remittance of value added tax);”

(c) a schedule of financial sponsorship indicating the nature and value of any such sponsorship offered to the contractor;

(d) proof of financial sponsorship referred to in paragraph (c);

(dA) in the case of a trust, a copy of trust deed as contemplated in the Trust Property Act, 1988;

Paragraph (dA) was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(e) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration;

(f) in the case of an application relating to the class of works “electrical engineering”, a certified copy of the contractor’s electrical contractor licence issued by the Electrical Contracting Board of South Africa;

(g) if applicable, certified copies of the contractor’s registration certificate issued in terms of the Housing Consumer Protection Measures Act, 1998, and proof of current payment;

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(h) any other information required by the Board in relation to the contractor grading designation of a contractor.

(1A) If a contractor does not fully comply with a request from the Board to provide information in relation to his or her application, within 90 days from the date of that request, the Board may cancel the application and must refund the annual fees paid by the contractor.

(1B) In the case of an application for registration by a contractor whose supporting documents are not in English, that application must be accompanied by an English translation of those documents, prepared by a sworn translator.

Subregulations (1A) and (1B) were inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(2) The Board must for the purpose of assessing an application in terms of this regulation and subject to section 30 of the Act, take reasonable steps to verify the information submitted by a contractor in terms of this regulation.

(3) If an application in terms of this regulation is made on the worldwide web, the supporting documentation referred to in subregulation (1) must be submitted to the Board by mail or by hand and the application is not considered to have been duly completed as contemplated in regulation 10(3), until such submission has been received by the Board.

(4) Regulation 10 applies with the necessary changes to an application in terms of this regulation.

Renewal of registration

9. These regulations apply with the necessary changes to an application for the renewal of registration in terms of section 20 of the Act.

Procedure in relation to registration

10. (1) The Board must appoint an assessor from its staff complement or a person who is not employed by the Board and who has relevant expertise, to evaluate every application for registration in terms of these Regulations.

(2) The Board must appoint an assessment committee, consisting of three members, from its staff complement to approve the evaluations of the assessor and the Board may appoint other persons who are not employed by the Board and who have relevant expertise, to assist that committee, but that other persons may only make a recommendation in relation to the approval of an assessment by the assessor.

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(3) Subject to subregulations (4) and (5), the assessment committee must within 21 working days from receipt of a duly completed application and the relevant fees, decide on the category of registration of the contractor and register that contractor accordingly.

(4) The assessment committee may, if it decides on a category of registration lower than that applied for by the contractor, register the applicant in that category and notify him or her of such decision within 21 working days.

Subregulation (4) was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(5) The contractor may, if the contractor does not agree with the categorization decided on by the assessment committee, subject to section 3 of the Promotion of Administrative Justice Act, 2000, (Act No. 3 of 2000), submit reasons to the assessment committee for reviewing the assessment.

- (6) The registration of a contractor is subject to the conditions that the contractor concerned-
- (a) from a date determined by the Minister by notice in the *Gazette*, complies with the code of conduct;
 - (b) submits an original tax clearance certificate to the Board at least three weeks prior to the expiry of the current tax clearance certificate; and
 - (c) subject to regulations 8 and 36(2), remains in compliance with the requirements in terms of these Regulations in relation to the category in which that contractor is registered.

(7) If a contractor, who is registered in contractor grading designation 1, during the period of five years immediately preceding his or her application for registration in terms of these Regulations, has completed a project exceeding a value of R10 000, the register of contractors and his or her registration certificate must be endorsed to indicate that he or she has a track-record.

Subregulation (7) was inserted by Government Notice 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

Manner of determination of contractor grading designation

11. (1) The contractor grading designation of a contractor is determined by determining the least of-

- (a) the financial capability of the contractor in accordance with subregulation (2); and
 - (b) the works capability of the contractor in accordance with subregulation (5).
- (2) The financial capability of a contractor is determined by establishing whether-
- (a) the contractor's average annual turnover of the two financial years immediately preceding the application equals or exceeds the minimum annual turnover determined in relation to the financial capability designation contemplated in regulation 12(1);
 - (b) the contractor during the five financial years immediately preceding the application has completed at least one construction works contract of which the total contract value, exceeds the amount of the financial capability referred to in regulation 12(1);

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and

Paragraph (b) was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

- (c) the contractor has the ability to mobilize a total employable capital, calculated in accordance with subregulation (3), equal to or exceeding a value determined in relation to the financial capability designation as contemplated in regulation 12(1).
- (3) Total employable capital is determined in terms of the formula $(NAV \times r) + s$, where-
 - (a) NAV is the nett asset value (sum of the contractor's assets less the sum of the contractor's liabilities) determined from the contractor's annual financial statements of the two years immediately preceding the application and summarized on the approved form;
 - (b) "r" is the bank rating factor determined in accordance with regulation 12(2) and (3) and issued by the contractor's bank; and
 - (c) "s" is the total value of financial sponsorship.

(3A) Notwithstanding subregulation (3)(a), if an application is made in terms of these Regulations –

- (i) in the case of a company, within 6 months from the end of its financial year; and
- (ii) in the case of a close corporation, within 4 months from the end of its financial year,

the financial statements of the two years immediately preceding the last financial year may be taken into account.

Subregulation (3A) was inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(4) The Board must be satisfied that the financial sponsorship submitted by an applicant in terms of these Regulations, is of a nature that will enable the applicant to comply with the requirements of regulation 12.

- (5) The works capability of a contractor must be determined by establishing whether-
 - (a) the contractor employs the requisite number of qualified persons as contemplated in regulation 12(4) in the class of works as indicated in Schedule 3, for which the contractor wishes to register;
 - (b) the contractor has satisfied requirements contemplated in regulation 12(5), (6) or (8) in relation to any specific class of construction works; and
 - (c) the contractor has during the five financial years immediately preceding the application completed at least one construction works contract in the category of construction works for in which the contractor wishes to register, of which the value exceeds the amount of that works capability designation as contemplated in regulation 12(7).

Paragraph (c) was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

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Requirements in relation to contractor grading designation

12. (1) The values required to determine the financial capability of a contractor are as indicated in table 1 below:

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TABLE 1

Financial Capability		Track Record		Minimum Current Financial Capability
Designation	Maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range)	Minimum Average Annual Turnover Over The Last 2 Years	At Least one Contract During The Last 5 Years With a Value Greater Than	Employable Capital (EC) of at least (<i>Nett Asset Value x Bank Rating Factor</i>) + <i>financial sponsorship</i>
1	R 200 000	R 0	R 0	R 0
2	R 500 000	R 0	R 80 000	R 60 000
3	R 1 500 000	R 780 000	R 260 000	R 195 000
4	R 3 000 000	R 2 400 000	R 800 000	R 600 000
5	R 5 000 000	R 4 800 000	R 1 600 000	R 1 200 000
6	R 10 000 000	R 9 000 000	R 3 000 000	R 2 250 000
7	R 30 000 000	R 24 000 000	R 8 000 000	R 6 000 000
8	R 100 000 000	R 78 000 000	R 26 000 000	R 19 500 000
9	No limit	R 240 000 000	R 80 000 000	R 60 000 000

Table 1 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

Provided that, in the case of an application for registration in –

- (a) contractor grading designation “2”, the applicant must meet at least the requirement as indicated for that contractor grading designation in column 4 of table 1, or the requirement so indicated in column 5 of that table; or
- (b) contract or grading designation “3” or “4”, the applicant must meet the requirement as indicated in relation to that designation in column 4 of table 1 and at least one of the requirements so indicated in that table in column 3 or 5.

(2) The bank rating must be requested for a period of one month and the values on which bank rating must be based in relation to the financial capability of the contractor are as indicated in table 2 below:

TABLE 2

Financial Capability *		Value On Which Bank Rating Must Be Based
Designation	Maximum Value Of Contract That A Contractor Is Considered Capable Of	
1	R 200 000	No requirement
2	R 500 000	R24 000
3	R 1 500 000	R78 000
4	R 3 000 000	R240 000
5	R 5 000 000	R480 000
6	R 10 000 000	R900 000
7	R 30 000 000	R2 400 000
8	R 100 000 000	R7 800 000
9	No limit	R2 4 000 000

Table 2 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

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(3) The bank-rating factor is determined as indicated in table 3 below:

TABLE 3

Bank Code	Description of Bank Code	Bank Rating Factor (r)
A	Undoubted for the amount of enquiry	3
B	Good for the amount of enquiry	3
C	Good for the amount quoted if strictly in the way of business	2
D	Fair Trade risk for amount of enquiry	1
E	Figures considered too high	1
F	Financial position unknown	1
G	Occasional dishonours	1
H	Frequent dishonours	1

(4) The minimum number of qualified persons employed permanently full time or the equivalent number of qualified persons so employed on a part time basis in relation to a works capability designation are as indicated in table 4 below:

TABLE 4

Works Capability		Minimum Number of Full-time equivalent Qualified Persons Required for Registration in a Category of Construction Works				
Designation	Maximum Value of Contract that a Contractor is Considered Capable of Performing	General Building (GB)	Civil Engineering (CE)	Electrical Engineering (EE)	Mechanical Engineering (ME)	Specialist Works (SP)
1	R 200 000	-	-	-	-	-
2	R 500 000	-	-	-	-	-
3	R 1 500 000	-	-	-	-	-
4	R 3 000 000	-	-	-	-	-
5	R 5 000 000	-	-	-	-	-
6	R 10 000 000	-	-	1	1	1
7	R 30 000 000	1	1	2	2	2
8	R 100 000 000	2	2	3	3	3
9	No limit	3	3	4	4	4

Table 4 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

(5) For the class of construction works: “Electrical Engineering Works” (EE), a contractor must be in possession of an electrical contractor license issued by the Electrical Contracting Board of South Africa.

(6) For the class of construction works: “Specialist Building Works: Building of Homes” as contemplated in the Housing Consumer Protection Measures Act, 1998, a contractor must be registered as a homebuilder in terms of that Act.

(7) To qualify to be categorised in a specific works capability designation as indicated in columns 1 and 2 of table 5 below, a contractor must, in addition to the requirements of subregulation (5), have successfully completed a contract of at least the value indicated in column 3 of table 5 below:

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TABLE 5

Works Capability		Largest Contract Executed In The Last 5 Years In The Class Of Construction Works Applied For
Designation	Maximum Value Of Contract That A Contractor is Considered Capable of Performing	
1	R 200 000	No requirement
2	R 500 000	R 80 000
3	R 1 500 000	R260 000
4	R 3 000 000	R 800 000
5	R 5 000 000	R 1 600 000
6	R 10 000 000	R 3 000 000
7	R 30 000 000	R 8 000000
8	R 100 000 000	R 26 000 000
9	No limit	R 80 000 000

Table 5 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

- (8) A person is considered to be a qualified person for the purpose of regulation 7(4) if that person-
- (a) for the classes of construction works “Civil Engineering”, “Electrical Engineering” and Mechanical Engineering” is registered in accordance with the Engineering Profession Act, 2000 (Act No. 46 of 2000) or the Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000); and
 - (b) for the classes of construction works “General Building” and “Specialist Works” is registered in accordance with the-
 - (i) the Project and Construction Management Professions Act, 2000;
 - (ii) the Engineering Profession Act, 2000;
 - (iii) the Architectural Profession Act, 2000(Act No. 44 of 2000);
 - (iv) the Quantity Surveying Profession Act, 2000 (Act No. 49 of 2000); or
 - (v) the Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000).

Board to identify potential emerging enterprise status

13. The Board must identify whether a contractor who has applied for registration in the category contemplated in regulation 6(1)(b), can be classified as a potentially emerging enterprise by:-
- (a) identifying the principals who are previously disadvantaged persons;
 - (b) establishing whether the principals who are previously disadvantaged persons own at least fifty percent of the enterprise;
 - (c) establishing whether the principals who are previously disadvantaged persons possess and exercise-
 - (i) the authority to manage the assets and daily operations of the enterprise; and

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- (ii) appropriate managerial and financial authority in determining the policies and directing the operations of the enterprise.

Requirements for a contractor who is a newly constituted enterprise

14. (1) The contractor grading designation for a newly constituted enterprise must be determined in accordance with regulation 11 but the total employable capital of the contractor must be equal to or exceed the values indicated in column 3 of table 6 below in relation to the financial capability designation indicated in columns 1 and 2 of that table, and regulation 11(2)(c) and (5)(c) do not apply.

TABLE 6

Financial Capability		Minimum Current Capability
Designation	Maximum Value of Contract that a Contractor is Considered Capable of Performing	Employable Capital (EC) of at least <i>(Nett Asset Value x Bank Rating (r)) + financial sponsorship(s)</i>
1	R 200 000	No requirement
2	R 500 000	R 60,000
3	R 1 500 000	R 325,000
4	R 3 000 000	R 1,000,000
5	R 5 000 000	R 2,000,000
6	R 10 000 000	R 3,750,000
7	R 30 000 000	R 10,000,000
8	R 100 000 000	R 32,500,000
9	No limit	R 100,000,000

Table 6 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

(2) If a contractor has been in operation for a period exceeding one year but less than two years, the contractor grading designation of the contractor is the most favourable of the contractor grading designations determined in accordance with subregulation (1) or regulation or regulation 10, but where the annual turnover of only one year is required.

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Recognition of registration as homebuilder

15. The contractor grading designation of a contractor who is registered as a home builder in terms of the Housing Consumer Protection Measures Act, 1998 is deemed to be registered in the class: “SP: Home Building” and the grading of that contractor must be determined in accordance with table 7 below:

TABLE 7

Contractor Grading		Equivalent registration in terms of the Housing Consumer Protection Measures Act, 1998	
Designation	Maximum Value of Contract that a Contractor is Considered Capable of Performing	(NHBC Grading reflects the number of houses that a Home Builder may construct simultaneously)	
		P Rating	S Rating
1	R 200 000	2	5
2	R 500 000	5	16
3	R 1 500 000	15	54
4	R 3 000 000	46	162
5	R 5 000 000	76	271
6	R 10 000 000	152	To be determined by the Board in consultation with NHBC
7	R 30 000 000	455	
8	R 100 000 000	To be determined by the Board in consultation with the NHBC	
9	No limit	To be determined by the Board in consultation with the NHBC	

Table 7 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

Foreign enterprise

16. The contractor grading designation of a contractor who is not based in South Africa, is determined in accordance with these Regulations, but is based on the exchange rate in ZAR on the date of receipt of a duly completed application.

Tender value range contractor considered capable of undertaking

17. A contractor registered in a contractor grading designation indicated in column 1 of the table 8 below, is considered to be capable of undertaking a contract in the range of tender values indicated in columns 3 and 4 of that table in the class of the construction works to which the category of registration of that contractor relates.

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TABLE 8

“Contractor Grading Designation	Tender Value Range Designation	Range of Tender Values	
		Greater than	Less than or equal to
1(class of construction works)	1	R 0	R 200 000
2(class of construction works)	2	R 200 000	R 500 000
3(class of construction works)	3	R 500 000	R 1 500 000
4(class of construction works)	4	R 1 500 000	R 3 000 000
5(class of construction works)	5	R 3 000 000	R 5 000 000
6(class of construction works)	6	R 5 000 000	R 10 000 000
7(class of construction works)	7	R 10 000 000	R 30 000 000
8(class of construction works)	8	R 30 000 000	R 100 000 000
9(class of construction works)	9	R 100 000 000	No limit”

Table 8 was amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

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PART III
REGISTER OF PROJECTS

Registration of projects

18. (1) An employer must, within 21 working days from the date on which a contractor's offer to perform a construction works contract is accepted in writing by the employer, apply on the approved form to the Board for the registration of every project, consisting of a single construction works contract, of which the contract value exceeds a value determined by the Minister by notice in the *Gazette*.

(2) The Board must, within 30 working days from receipt of the duly completed application in terms of subregulation (1), register the project concerned and supply the employer with a receipt of registration.

- (3) The employer must indicate in the application referred to in subregulation (1), whether -
- (a) the project being registered relates to a project that consists of a series of contracts; or
 - (b) the project being registered relates to a programme, if any;
 - (c) the project relates to a public-private partnership; and
 - (d) that employer acts on behalf of a client.

(4) The client that initiated the project concerned must pay the fee as shown in Schedule 2, on—

- (a) the date of registration of the project; or
- (b) in advance in relation to a number of projects that are to be registered by that client, for a period agreed on with the Board.

Exemption

19. Any project consisting of a contract entered into with a client or employer that relates only to construction works-

- (a) in relation to provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998); or
- (b) undertaken in a mining area as defined in the Petroleum and Mineral Resources Development Act, 2002 (Act 28 of 2002), and which form part of excavations below surface bounded by the shaft collar, or portal to the adit of an underground mine, or by the pit rim for open cast mines, and including the construction of a shaft collar, portal or pit rim,

is exempt from these regulations.

Regulation 19 was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

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Representative of employer

20. (1) The employer must on the approved form identify a person who acts as its representative and who is authorised to access the register of projects and the register of contractors on its behalf.

(2) The employer must on the approved form notify the Board if the person identified in terms of subregulation (1) as its representative for any reason ceases to act as such.

(3) The employer must ensure that his or her representative complies with the conditions of use of the register of contractors.

Reporting

21. (1) The employer must in relation to a construction works contract registered in terms of these Regulations, within one calendar month of the date -

- (a) of issue of a practical completion certificate;
- (b) on which that contract is renewed;
- (c) on which a contract is cancelled or terminated; and
- (d) of settling all amounts owing to the contractor in accordance with the contract, as determined by the employer,

submit a status report to the Board in the format determined by the Board.

(2) An employer must notify the Board of any arbitration entered into or litigation initiated in relation to a construction works contract registered in terms of these Regulations, within one calendar month from the starting date of that arbitration or litigation.

(3) An employer who is an organ of state, who awards a contract to an emerging enterprise who has a contractor grading designation lower than that required for the contract as contemplated in Part IV of these Regulations, must on the approved form notify the Board of the nature of the financial or management support that is provided to the contractor concerned as contemplated in that Part and the benefit derived from such support in the development of that contractor.

(4) If the failure by an organ of state to register a project in terms of these Regulations come to the attention of the Board must report that failure by that organ of state to the Auditor-General.

Best practice project assessment scheme

22. Subject to section 23 (2) and (3) of the Act, every project in excess of the value determined in terms of that section, must be assessed in relation to the compliance with best practice standards and guidelines published by the Board in terms of section 5 of the Act.

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PART IV

**INVITATION, AWARD AND MANAGEMENT OF CONSTRUCTION WORKS
CONTRACTS**

Application

23. This Part applies only to a client or employer who is an organ of state and in relation to construction works contracts of which the value exceeds R30 000.00.

Regulation 23 was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

Preparation for construction procurement

24. Every client or employer who is soliciting competitive tenders in the construction industry must publish that invitation to tender on the official CIDB website and that solicitation must be in accordance with-

- (a) if applicable, the Regulations in terms of the Public Finance Management Act: Framework For Supply Chain Management as published in Gazette no. 25767 of 5 December 2003; or
- (b) if applicable, the Municipal Supply Chain Management Regulations, published by Government Notice No. 868 of 2005, in *Gazette* number 27636 of 30 May 2005; and
- (c) the Standard for Uniformity in Construction Procurement, published by Board Notice No. 62 of 9 June 2004 in *Gazette* No.26427 of 9 June 2004.

Regulation 24 was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

Invitation of tender or expression of interest for construction works contracts

25. (1) Subject to subregulation (1)(A), in soliciting a tender offer or an expression of interest for a construction works contract, a client or employer must stipulate that only submissions of tender offers or expressions of interest by contractors who are registered in the category of registration required in terms of subregulation (3) or higher, may be evaluated in relation to a project.

Subregulation (1) was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

(1A) Notwithstanding subregulation (1), the tender offer or expression of interest of a contractor who is not registered as contemplated that subregulation, but who is capable of being so registered prior to the evaluation of those submissions may be evaluated, but in the case of expressions of interest, the contractor concerned must be capable of being so registered within 21 working days

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after the closing date for those submissions.

Subregulation (1A) was inserted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

- (1B) Where a contract involves construction works over an agreed number of years -
- (a) on an “as and when required” basis;
 - (b) of a routine nature; or
 - (c) grouped into identifiable and similar components where an instruction to proceed to the construction of the next component is conditional on the successful completion of the previous component,

the value of that contract may for the purpose of subregulation (1), be taken at its annual value.

(2) Despite subregulation (1), a client or employer, under extreme conditions, is entitled to determine that only submissions of tender offers or expressions of interest by contractors who are already registered in terms of these Regulations will be evaluated and for the purpose of this regulation, “extreme conditions” mean conditions where-

- (a) human injury or death;
- (b) human suffering or deprivation of human rights;
- (c) serious damage to property or financial loss;
- (d) injury, suffering or death to livestock or other animals;
- (e) serious environmental damage or degradation; or
- (f) interruption of essential services,

is present or imminent.

(3) The category of registration for contractors whose submissions of tender offers or expressions of interest qualify to be evaluated in terms of subregulation (1), is -

- (a) a contractor grading designation not lower than that derived from-
 - (i) the selection of a single class of construction work that best describes the construction works contract for which tender offers or expressions of interest is invited, or the broad technical capabilities required of the contractor, provided that if more than one class of works equally describes the construction work for which tender offers are invited, then an alternative class of work may also be selected in terms of this subparagraph, but not more than two classes of work may be so selected; and
 - (ii) the identification of the tender value range based on the estimated tender value where expressions of interest are called for or tenders are advertised and the tendered price where tenders are evaluated, and where that estimate is within 20 percent of the lower limit of that tender value range, the tender value range immediately below that tender.

Paragraph (a) was substituted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

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(b) from a date determined by the Minister in the *Gazette*, the recognition status in terms of a best practice contractor recognition scheme in relation to the capabilities of the contractor concerned but if a requirement in terms of this paragraph is set, it must be justifiable in respect of the quality of the procurement .

(4) The solicitation referred to in subregulation (1) must specify the lowest category of registration as contemplated in subregulation (1), and determined in accordance with subregulation (3), required for the construction works contract contemplated in subregulation (1).

(5) Subject to subregulation (1), joint ventures are eligible to submit tender offers or expressions of interest if-

(a) every member of the joint venture is a registered contractor in terms of these Regulations and the lead partner has a contractor grading designation in the class of construction works under consideration and possesses the required recognition status; and

(b) the category of registration of the joint venture, determined in accordance with subregulation (6) is equal to or higher than the category of registration specified in accordance with subregulation (3).

(6) The contractor grading designation for a joint venture is determined in accordance with regulation 11 but is calculated based on-

(a) the sum of the annual turnover of all the members to the joint venture;

(b) the sum of the employable capital of all the members to the joint venture; and

(c) the total number of equivalent full-time qualified persons in the construction works category in which the joint venture wishes to be registered,

but where-

(i) a contractor is graded solely on the basis of employable capital, that contractor is deemed to have an annual average turnover equal to the values set out in columns 3 and 4 of Table 1 in regulation 12(1) in relation to his or her contractor grading designation; and

(ii) a contractor is registered in grading designation of 2, 3 or 4, the actual values that were used for the parameters that were assessed and notional values must be assigned to the parameters referred to in paragraphs (a) to (c) that the contractor was not assessed on, in accordance with the following formula:

$$\text{notional value for parameter not assessed} = \frac{(A - B) \times (E - D) + D}{(C - B)}$$

where:

A = value accepted by the Board for employable capital / annual average turnover / contract value to determine the capability of a contractor;

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- B = minimum value of average annual employable capital / average turnover, corresponding to A, required to determine the capability of a contractor in the contractor grading designation in which the contractor is registered [see table 1 in regulation 12(1)];
- C = minimum value of average annual employable capital / average turnover, corresponding to A, required to determine the capability of a contractor in one contractor grading designation higher than the one in which the contractor is registered [see table 1 in regulation 12(1)];
- D = minimum value of average annual employable capital / average turnover / contract value, corresponding to the parameter being assessed, required to determine the capability of a contractor in the contractor grading designation in which the contractor is registered [see table 1 in regulation 12(1)];
- E = minimum value of average annual employable capital / average turnover / contract value, corresponding to the parameter being assessed, required to determine the capability of a contractor in one contractor grading designation higher than the one in which the contractor is registered in [see table 1 in regulation 12(1)].’

Subregulation (6) was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

(7) On receipt of tender offers, the employer must, based on a reasonable derivation from those tender offers, determine the final lowest category of registration required for the evaluation of those offers.

(7A) An organ of state may subject to its procurement policy and notwithstanding anything to the contrary contained in this regulation, evaluate and award a tender offer from a tenderer who is registered but who tendered outside of his or her tender value range as contemplated in regulation 17, provided that –

- (a) the margin with which the tenderer exceeded his or her tender value range contemplated in regulation 17, is reasonable;
- (b) the award of the contract does not pose undue risk to the organ of state;
- (c) the tender offer in all other aspects comply with these Regulations; and
- (d) the report referred to in regulation 21 or 38(5) and (6), indicates whether this subregulation was applied in the award of the tender.

Subregulation (7A) was inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(8) Within the framework of a targeted development programme promoted by a client or employer, that client or employer may accept for evaluation tender offers or expressions of interest by a contractor who is registered as a potentially emerging enterprise in terms of these Regulations at a contractor grading designation, one level higher than the contractor’s registered grading designation, if that client or employer-

- (a) is satisfied that such a contractor has the potential to develop and qualify to be registered in that higher grade; and
- (b) ensures that financial, management or other support is provided to that contractor to enable the contractor to successfully execute that contract.

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(9) An employer must, before awarding a construction works contract, satisfy him or herself that the contractor concerned -

- (a) is registered in terms of these Regulations;
- (b) is not prohibited in terms of any legislation from submitting tender offers or expressions of interest to an organ of state; and
- (c) has demonstrated that-
 - (i) he or she has the resource capacity and capability specific to the contract concerned;
 - (ii) his or her capacity to perform the construction works concerned will not be unduly compromised on the award of the contract concerned.

(10) A tender offer received from a contractor that does not satisfy an employer as contemplated in subregulation (7), must be rejected.

Restriction to participate

26. (1) An accounting officer and an accounting authority as defined in the Public Finance Management Act, 1999(Act No. 1 of 1999), who in terms of legislation regulating procurement places a registered contractor or any principals of that contractor under any restriction to participate in public procurement as contemplated in these Regulations, must notify the Board of such restrictions and the reason therefore using an approved form.

(2) The Board must indicate on the register the names of all registered contractors that are suspended from participating in public procurement, the period of such suspension, the reason for such suspension and the name of the organ of state that placed them under such suspension.

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PART V
LEGAL PROCEDURE AND EVIDENCE

Suspension and deregistration

27. (1) The registration of a contractor who remains in arrears in respect of the payment of his or her annual fees for a period in excess of 90 days despite notification of the fact, must be suspended until those arrears are paid in full or arrangement for such payment has been made with the Board to its satisfaction.

(2) The registration of a contractor who fails to submit an original tax clearance certificate in accordance with regulation 7, or a confirmation of particulars in accordance with regulation 36(2), must be suspended until that original tax clearance certificate or confirmation of particulars has been so submitted.

(3) If a contractor has not rectified his or her failure to comply with these Regulations as contemplated in subregulations (1) or (2) on the date one year after the suspension referred to in subregulation (1), or if the arrangements made in terms of subregulation (1) are not honoured by the contractor concerned, the name of that contractor must be removed from the register of contractors.

- (4) The name of a contractor may be removed from the register of contractors if that contractor-
- (a) has permanently been prohibited from submitting a tender offer to an organ of state in terms of any legislation;
 - (b) has requested the Board in writing to remove his or her name from the register; or
 - (c) has been found guilty of an offence in terms of the Act .

Preliminary investigation of complaint

28. (1) Any person who is aggrieved by an action taken in terms of these Regulations or an omission to take such action, may lodge a complaint with the Board and the Board must appoint an investigating officer to investigate that complaint.

(2) The Board may initiate an investigation in terms of this regulation if the Board is of the opinion that any person has acted contrary to these Regulations or has omitted to act in terms of these Regulations, including the undertaking of construction works in contravention of section 18 of the Act.

(3) An investigating officer must investigate any complaint brought against a person in terms of subregulations (1) or (2), hereafter referred to as “the accused”, to determine if reasonable grounds exist to suspect that the accused has committed an act or omitted to act, which may render him or her guilty of any transgression in terms of the Act, except a transgression in terms of regulation 27 or regulation 30.

(4) If the investigating officer is satisfied that reasonable grounds as contemplated in subregulation (3) exist, he or she must –

- (a) investigate the matter; and

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- (b) obtain evidence to determine if in his or her opinion any action may be taken against the accused in terms of the Act.

(5) An investigating officer may not question the accused unless he or she informs that accused that he or she —

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement so made may be used in evidence against the him or her.

(6) The investigating officer must, after the conclusion of the investigation, submit a report to the Board making his or her recommendations to the Board regarding any matter referred to it in terms of subregulation (1).

Hearing of complaint

29. (1) The Board must after considering a report of the investigating officer in terms of regulation 28(4), act in accordance with the recommendations of the investigating officer if the Board is convinced that sufficient grounds exist for such action.

(2) The Board must notify the accused of the intended investigation by hand or registered mail and that notice must inform the accused—

- (a) of the details and nature of the action or omission by the accused under investigation that may constitute a transgression of the Act and with which the accused is charged;
- (b) that he or she must, in writing, admit or deny responsibility for that action or omission;
- (c) that he or she may, together with the admission or denial, submit a written explanation regarding the action or omission under investigation;
- (d) of the period within which his or her plea in terms of paragraph (b) must be submitted to the Board.

(3) If the notice referred to in subregulation (2) related to a transgression of section 18 of the Act, the Board must serve a copy of that notice on the client or employer with whom the contractor concerned has entered into a contract to perform the construction works concerned.

(4) If an accused admits that he or she is guilty of the transgression, he or she is considered to have acted in transgression of the Act or to have omitted to act in terms of the Act, as the case may be, after he or she has explained his or her action or omission and the Board may act in accordance with subregulation (20).

(5) The acquittal or the conviction of the accused by a court of law on a criminal charge does not bar proceedings against him or her under this regulation even if the facts stated in the notice referred to in subregulation (2), would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

(6) The Board must appoint a committee to hear a case if the accused—

- (a) denies the charge; or

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- (b) fails to comply with subregulation (2)(b).
- (7) The committee must consist of at least -
 - (a) two persons who have expertise in the fields relevant to the investigation; and
 - (b) a person qualified in law, who must act as the chairperson of the committee.
- (8) The committee may, for the purposes of this regulation, appoint a person to assist it in the performance of its functions.
- (9) (a) The committee may, subject to section 29 of the Act, for the purposes of an inquiry, subpoena any person-
 - (i) who in its opinion may be able to give material information concerning the subject of the investigation; or
 - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the investigation to appear before the committee at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must -
 - (i) be in the form as shown in Schedule 4;
 - (ii) be signed by the chairperson of the committee or, in his or her absence, any member of the committee; and
 - (iii) be served on the accused concerned personally or by registered mail.
- (10) The committee may retain a book, document or object produced in terms of subregulation (9) for the duration of the investigation.
- (11) The chairperson of the committee may call upon and administer an oath or take an affirmation from any witness at the inquiry who was subpoenaed in terms of subregulation (9).
- (12) At a hearing the accused -
 - (a) (i) may personally be present at the inquiry of the proceedings;
 - (ii) may be assisted or represented by another person in conducting the proceedings;
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge; and
 - (vi) may have access to documents produced in evidence;
 - (b) (i) may admit at any time before conviction that he or she is guilty of the action or omission under investigation despite the fact that he or she denied responsibility or failed to react in terms of subregulation (2)(b);
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of the charge in relation to the action or omission under investigation.
- (13) The accused may during an inquiry -

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- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;
 - (b) question any person who was subpoenaed in terms of subregulation (9); or
 - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subregulation (9) suspects or believes to have a bearing on the subject of the inquiry.
- (14) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the inquiry at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
 - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the committee from further attendance.
- (c) A witness who has been subpoenaed may request that the names of the members of the committee be made available to him or her.
- (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law applies with the necessary changes, to the, examination of, or the production of any book, document or object to the committee, by, any person called in terms of this section as a witness.
- (e) A witness may not, after having been affirmed as a witness, give a false answer or statement on any matter knowing that answer or statement to be false.
- (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object, which he or she is in terms of this regulation, is required to give or produce.

(15) The record of evidence which has a bearing on the charge before the committee and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -

- (a) the record is accompanied by a certificate from the chairperson of that commission; and
- (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(16) If the action or omission with which the accused is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the accused as the person referred to in the

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record, sufficient proof of the commission by him or her of that of fence, unless the conviction has been set aside by a superior court.

- (17) After the conclusion of the hearing, the committee must, within 30 days -
- (a) decide whether or not the accused is guilty of the transgression charged with;
 - (b) if the committee finds that the accused is guilty of that transgression, take cognizance of any aggravating or mitigating circumstances;
 - (c) inform the accused and the Board of the finding and the reasons for that finding;
 - (d) inform the accused of his or her right to judicial review of the finding in terms of section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(18) An accused found guilty of a transgression in terms of this regulation may -

- (a) address the committee in mitigation of sentence; and
- (b) call witnesses to give evidence on his or her behalf in mitigation of the finding.

(19) If the accused is found guilty of the transgression charged with or, or if he or she admits that he or she is guilty of the charge, the committee must inform the Board accordingly and recommend to the Board the appropriate action to be taken.

(20) The appropriate action to be taken may include-

- (a) where the charge relates to a transgression of section 18(1) of the Act-
 - (i) allowing the contractor in terms of section 18(4) of the Act to complete the construction works concerned;
 - (ii) ordering the removal of the name of a contractor from the register in accordance with section 19 of the Act;
- (b) issuing a warning to the accused;
- (c) reprimanding the accused;
- (d) reporting the accused to the Auditor-General or the Public Protector or both;
- (e) imposing a fine not exceeding R100 000.00 on the accused; or
- (f) suspending the accused from participating in public sector procurement for a period of time; and
- (g) making a cost determination that the accused, the Board or the party who initiated the investigation, must defray all or part of the costs incurred to conduct the investigation.

(21) The Board must publish the details of the finding in the *Gazette* and if applicable, update the register of contractors accordingly.

Offences

30. (1) Any person or organ of state who-
- (a) supplies the Board with false information to mislead the Board;
 - (b) fails to register a project in terms these Regulations;
 - (c) award a construction works contract contrary to these Regulations; or

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(d) fails to comply with these Regulations,
is guilty of an offence and is liable to a fine not exceeding R100 000.00.

(2) In the case of a person or an organ of state being found guilty in terms of this regulation, the particulars of the finding and the sentence must be published by the Board by notice in the *Gazette*, and in the case of an organ of state, the Court concerned must submit the particulars of its finding to the Auditor- General.

(3) The Board must, if any activity contemplated in the Prevention and Combating of Corrupt Activities Act, 2004, comes to their attention, report such activity to a police official as contemplated in that Act.

Copies of notices to be retained and presumptions

31. (1) The Board must retain a copy of every notice served on a person in terms of these regulations and such copy shall serve as *prima facie* evidence that the notice concerned has been duly served by the Board.

(2) A copy of a notice served by hand on an unregistered contractor in terms of section 18 of the Act, is *prima facie* evidence that the contractor concerned has acknowledged receipt of that notice.

Copies of entry into registers to be evidence

32. (1) A document purporting to be an extract from, or copy of, any register or record kept in terms of the Act and purporting to be certified as a true extract or copy by a person stating that he or she has the custody or control of such register or record, shall in any court be admissible as evidence and be *prima facie* evidence of the facts stated therein without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerised record from or of which such extract or copy was made.

(2) The information contained in a register or record kept for the purposes of the Act shall subject to the Promotion of Access to information Act, 2000, (Act No. 2 of 2000) be furnished -

- (a) to any client who has registered a project in terms of these regulations;
- (c) to any organ of state; or
- (e) subject to the prior consent of the Minister or any person authorised thereto by the Minister, to a competent authority of another country.

Cognisance may be taken of information contained in register or record

33. The Minister, the Board or any other competent authority may, in exercising a discretion or taking a decision in terms of the Act, take cognisance of any information contained in a register or record contemplated in the Act or kept by the Board.

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Access to information

34. (1) The information contained in a register or record kept for the purposes of the Act must, subject to the Promotion of Access to Information Act, 2000, be furnished -

- (a) to any client or employer who has registered a project in terms of these Regulations in relation to that project;
- (b) to any organ of state.

(2) The following information contained in the registers contemplated in these Regulations, must be publicly available:

- (a) identification particulars of a contractor;
- (b) the category of registration of a contractor; and
- (c) the disciplinary history of a contractor or a principal of that contractor.

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PART VI

GENERAL

Determinations in relation to fees

35. (1) If the registration of a contractor is cancelled during the period of validity of that registration for any other reason than following a decision in terms of sections 19 or 29 of the Act, that contractor is entitled to be refunded *pro rata* to the period that the contractor is not registered any more.

(2) A contractor must pay the annual fee referred to in section 16(8) of the Act and as shown in Schedule 2, in relation to the highest contractor grading designation in relation to which that contractor is registered, on the date of registration and during the two years following, on the date of anniversary of registration.

(3) An administration fee referred to in regulation 7 must be paid in relation to each class of works applied for.

(4) If an amendment to the category status of a contractor is applied for in terms of section 17(2) of the Act, the contractor so applying is, subject to subregulation (2), required to pay the annual fee in relation to the new contractor grading designation *pro rata* to the remaining period of his, her or its registration and in the case of an amendment of the category status to a lower contractor grading designation, that contractor is not entitled to a *pro rata* refund of the annual fee that he or she has already paid.

(5) The Board must, on receipt of any fees in terms of these Regulations, issue a receipt to the person who paid those fees, subject thereto that a registration certificate issued in terms of these Regulations is deemed to be a receipt in terms of this subregulation.

Change of particulars

36. (1) A contractor or organ of state must, if any particulars with regard to the relevant registration in terms of these Regulations changes, notify the Board accordingly.

(2) A contractor must on the date referred to in regulation 35(2), confirm his or particulars on the approved form.

Approved forms

37. Approved forms in relation to these Regulations may be obtained from the Board and submitted to the Board at the following addresses:

Construction industry Development Regulations, 2004 (as amended)
– updated until 18 August 2006-

<http://www.cidbregisters.org.za>;

Telephone Number: 0860 103 353

Fax Number: +27 12 481 9086; or

Blocks N & R, SABS Campus

Leyds Street Entrance,

Groenkloof

Pretoria

GAUTENG

Transitional measures

38. (1) Despite anything to the contrary contained in these Regulations a contractor who has been registered as such during the pilot project undertaken by the Board during the period immediately preceding the implementation of these Regulations, is exempt from the payment of the first administration fee that the contractor concerned is liable to pay.

(2) If an invitation to tender or submit expressions of interest has been issued by an organ of state before the date of commencement of these Regulations for that organ of state or the date determined by the Minister in terms of section 16 of the Act, that organ of state may award that tender or manage that tender process in accordance with the legislation or other requirements that applied to the organ of state at the time of publication of that invitation to tender or to submit expressions of interest, but-

- (a) the contractor to whom the contract has been awarded or who have been declared eligible to submit tender offers, must within 30 days after having been awarded the contract or notified of the eligibility to submit tender offers, apply for registration in terms of these Regulations; and
- (b) the employer concerned, must, within 30 days from the dates contemplated in paragraph (a) apply for the registration of the project concerned in terms of these Regulations.

(3) For the purpose of the contract contemplated in subregulation (2), the contractor grading designation of a contractor is deemed to be at the level that is required for that contract.

(4) For the purpose of the fair and equitable implementation of these Regulations, the Board may until 15 November 2007, notwithstanding anything to the contrary contained in these Regulations, relax any requirement in relation to the category of registration contemplated in Part II of the Regulations.

Subregulation (4) was inserted by Government Notice No. R.1333 of 12 November 2004, published in Government Gazette No. 26991 of 12 November 2004

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(4A) For the purpose of the fair and equitable implementation of these Regulations, the Board may until 15 November 2007, notwithstanding anything to the contrary contained in these Regulations, relax any requirement in relation to -

- (a) the registration of projects contemplated in Part III of these Regulations;
- (b) the invitation, award and management of construction works contracts contemplated in Part IV of these Regulations,

concerning construction works projects and contracts which solely relate to installation, repair, maintenance or alteration in consultation with the industry concerned.

Subregulation (4A) was inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

(5) Until 15 November 2007, a private sector client or employer must report the award of a construction works contract on the official CIDB website.

(6) Until 15 November 2007 and notwithstanding Part III of these Regulations, -

- (a) in relation to a public sector client or employer,
 - (i) the advertisement of a tender invitation in terms of a competitive process and the report of the award of a contract following that advertisement; and
 - (ii) the report of the award of a contract in terms of a non-competitive tender,
 - (iii) the report of a cancellation of contract, where applicable or

- (b) in relation to a private sector client or employer, the report of the award of a contract and, where applicable, the cancellation of a contract

on the approved form on the official CIDB website, is deemed to be registration of that project in terms of Part 111 of these Regulations.

(7) A client or employer is until 15 November 2007, exempt from paying the fee referred to in regulation 18(4).

(8) Until 15 November 2007, the invitation of a tender offer, report of the award of a contract or the cancellation thereof as contemplated in subregulation (6) on the official CIDB website, at least monthly in relation to the public sector and quarterly in relation to the private sector, is deemed to be a report in terms of regulation 21.

(9) If a contractor who was registered in terms of these Regulations, as a result of the relaxation of any requirement in terms of subregulation (4), qualifies to be registered in a contractor grading designation higher than the grade in which he or she was registered, that contractor may on the date of payment of his or her annual fee referred to in regulation 35(2) and notwithstanding regulation 8, be so upgraded.

(10) If a contractor who qualifies as contemplated in subregulation (8), wishes to be registered in the higher contractor grading designation before the date of payment of his or her annual fee, that contractor may apply for that amendment of category status in terms of regulation 8 and the contractor is liable to pay the fee referred to in that regulation.

Subregulations (5) to (10) were inserted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005

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Short title and commencement

39. (1) These regulations are called the Construction Industry Development Regulations, 2004, and come into effect for a client and an employer and the contractors who enter into construction works contracts with those clients or employers on the date determined by the Minister by notice in the Gazette.

(2) Different dates may so be determined for different clients or employers or groups of clients or employers and different contractors or groups of contractors and for different Parts or regulations.

SCHEDULE 1

Certificate Number: _____

Certificate of Contractor Registration

This is to certify that

Contractor's Name

has, in terms of Chapter Three of the Construction Industry Development Board Act, 2000, (Act NO. 38 of 2000), been registered in the category

Category of registration

CIDB Contractor Registration Number

Registration Date

Class of Works

Annual Update of Particulars

Maximum Contract Value

The continued registration of this contractor is subject to an annual update of particulars

Chief Executive Officer



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SCHEDULE 2
FEES

Table 1: Registration and Renewal Fees

Item	Fee in ZAR	Empowering section of the Act
1. Administration Fee in relation to contractor grading designations 1 and 2;	250.00	Section 16(6)
2. Administration Fee in relation to contractor grading designations 3-9	750.00	Section 16(6)
3. Renewal fee in relation to contractor registration for contractor grading designations 1 and 2	250.00	Section 20(2)
4. Renewal fee in relation to contractor registration for contractor grading designations 3-9	750.00	Section 20(2)
5. Project Registration Fee	750.00	Section 22(4)

Table 2: Annual Fees Payable in Respect of the Highest Contractor Grading Designation

Contractor grading designation	Fee in ZAR	Empowering section of the Act
1(class of construction works)	200	Section 16(8)
2(class of construction works)	250	Section 16(8)
3(class of construction works)	300	Section 16(8)
4(class of construction works)	800	Section 16(8)
5(class of construction works)	1500	Section 16(8)
6(class of construction works)	3000	Section 16(8)
7(class of construction works)	8000	Section 16(8)
8(Class of construction works)	25000	Section 16(8)
9(class of construction works)	40000	Section 16(8)

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**SCHEDULE 3
CLASSES OF CONSTRUCTION WORKS**

Description	Designation	Definition	Basic works types	Examples	Examples
Civil engineering works	CE	Construction works that are primarily concerned with the materials such as steel, concrete, earth and rock and their application in the construction, operation, maintenance and management of hydraulic, structural, environmental and systems aspects of infrastructure works and services.	Water, sewerage, transport, urban development and municipal services	Airports and runways Bridges, culverts and canals Concrete dams Cooling towers Earth and rock fill dams Earthworks, roads and storm water drainage Elevated reinforced concrete towers Freeways Fuel installations Grand stands Headgears Irrigation Marine works including dredging works Pump stations and pipelines	Railways and sidings Security fences Sewerage, reticulation and pump stations Silos Solid waste disposal sites Sporting facilities Swimming pools Township services (water, sewer, roads and storm water), Tunnels and underground works Wastewater and sewerage treatment Water retaining structures Water reticulation and treatment
Electrical engineering works	EE	Construction works that are primarily concerned with installation, testing, operation and maintenance of equipment, plant and systems within the electrical, electronic, communication and electrical systems areas.	Electrical power generation, transmission, distribution and utilisation, communications networks, and electronic plant and equipment and systems.	Electrical distribution systems and reticulations Electrical installations in buildings Intercommunication systems Power generation Radio, telemetry and Scada	Standby plant and uninterrupted power supply Street and area lighting Substations and protection systems Transmission Lines
General building works	GB	Construction works that: a) are primarily concerned with the provision of permanent shelter for its occupants or contents; or b) cannot be categorised in terms of the definitions provided for civil engineering works, electrical engineering works, mechanical engineering works, or	Buildings and ancillary works other than those categorised as being: a) civil engineering works; b) electrical engineering works; c) mechanical engineering works; or d) specialist works.	Airport control towers Aquariums Auditoriums, opera houses, concert halls Civic centres, city and town halls and theatres Communications, radio and television, computer buildings, Conference centres Conservatories Defence facilities Domestic facilities / dwelling units Educational facilities Fencing High rise buildings	Hospitals / Clinics Justice buildings Industrial buildings, aircraft hangers, barracks, sheds, warehouses Laboratories Low rise buildings Mortuaries Museums, monuments and memorials Police Stations Prison complexes Recreational and leisure facilities Refurbish / renovate buildings

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Description	Designation	Definition	Basic works types	Examples
		specialist works.		Security facilities Workshops
Mechanical engineering works	ME	Construction works that are primarily concerned with the installation, testing, operation and maintenance of machines, machine and thermodynamic processes and manufacturing, materials handling plants and systems.	Machine systems including those relating to the environment of building interiors.	Air-conditioning and mechanical ventilation Boiler installations and steam distribution Central heating Centralised hot water generation Compressed air, gas and vacuum installations Conveyor and materials handling installations
Specialist works	SA	A subset of construction works identified and defined by the Board that involves specialist capabilities for its execution	Alarms, security and access control systems	
	SB		Asphalt works (supply and lay)	
	SC		Building excavations, shaft sinking and lateral earth support	
	SD		Corrosion protection (cathodic, anodic and electrolytic)	
	SE		Demolition and blasting	
	SF		Fire prevention and protection systems	
	SG		Glazing, curtain walls and shop fronts	
	SH		Landscaping, irrigation and horticultural works	
	SI		Lifts, escalators and travellers (installation, commissioning and maintenance)	
	SJ		Piling and specialized foundations for buildings and structures	
	SK		Road markings and signage	
	SL		Structural steelwork fabrication and erection	
	SM		Timber buildings and structures	
	SN		Waterproofing of basements, roofs and walls using specialist systems.	
	SO		Water supply and drainage for buildings (wet services, plumbing)	
	SP		Building of Homes as contemplated in the Housing Consumer Protection Measures Act (Act No 95 of 1998)	

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SCHEDULE 4

SUBPOENA



SUBPOENA

In terms of section 29 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)

Person's Name

is hereby ordered to

(a) Appear at an inquiry on _____ (*Insert date*)
at _____ (*Insert*

Address) in relation to (*Insert details of*

inquiry) _____

(i) to answer to the charge referred to above

(ii) to witness in relation to the inquiry referred to above

(iii) Produce the following documentation or object in relation

to _____

(Insert details of inquiry) before or

on _____ (*Insert date*)

at _____

_____ (*insert address*)

*Chairperson: Committee appointed in terms of
regulation 29 of the Construction Industry
Development Regulations, 2004*