CONSTRUCTION INDUSTRY DEVELOPMENT REGULATIONS

Act

Published under

GN 692 in *GG* 26427 of 9 June 2004

as amended by

GN R1333 in *GG* 26991 of 12 November 2004
GN 751 in *GG* 27831 of 22 July 2005
GN 842 in *GG* 29138 of 18 August 2006
GN 1121 in GG 30510 of 23 November 2007
[with effect from 1 January 2007[i]*]
GN R1224 in *GG* 31603 of 14 November 2008[ii]*
[with effect from 1 January 2009]
GN R464 in *GG* 36629 of 2 July 2013[iii]*
[with effect from 1 August 2013]

The Minister of Public Works has under section 33 of the Construction Industry Development Board Act, 2000, (Act 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 eThekwini 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 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 733 of 1 July 2004 'Local Government Municipal Finance Management Act 2003 Delays and Exemption', on 3 July 2006;

(x) a municipality classified as a low capacity municipality in Government Notice 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

Copyright Juta & Company Limited

[Para. *(a)* substituted by GN 751 of 22 July 2005.]

(b) Part III commences in relation to all private sector projects of which the project value exceeds R3 million on 30 August 2005.

[Para. *(b)* substituted by GN R1333 of 2004 (wef 12 November 2004) and by GN 751 of 22 July 2005.]

(c) Notwithstanding paragraphs *(a)* and *(b)*, Part III commences in relation to all public sector projects of which the project value exceeds R300 000.00 on 14 November 2005: and

[Para. *(c)* substituted by GN R1333 of 2004 (wef 12 November 2004).]

(d) Notwithstanding paragraphs *(a)* and *(b)*, Part III commences in relation to all private sector projects of which the project value exceeds R300 000.00 on 14 November 2007.

[Para. *(d)* added by GN R1333 of 2004 (wef 12 November 2004).]

SCHEDULE

PART I
INTERPRETATION (regs 1-2A)

1 Definitions

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;

'available capital' means the amount calculated in accordance with regulation 11(3);

[Definition of 'available capital' inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

'code of conduct' means the code of conduct published by Board Notice 127 in *Gazette* 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 3;

'employable capital' .....

[Definition of 'employable capital' deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

'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 a financial sponsorship contemplated in regulation 7(10);

[Definition of 'financial sponsorship' substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

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

'net asset value' means the sum of a person's equity, retained income and shareholders or members loans;

[Definition of 'net asset value' inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Copyright Juta & Company Limited

'NHBRC' .....
[Definition of 'NHBRC' deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

'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' .....
[Definition of 'qualified person' deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

'the Act' means the Construction Industry Development Board Act, 2000 (Act 38 of 2000).

2 Value

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 89 of 1991).

2A

Wherever in these Regulations financial statements are referred to, it means financial statements prepared in accordance with Generally Accepted Accounting Practice (GAAP) or the International Financial Reporting Standard (IFRS), and certified by a person who is by law required to certify those financial statements, if any,

[Reg. 2A inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

PART II
REGISTER OF CONTRACTORS (regs 3-17)

3 Particulars to be contained in register of contractors

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) .....

[Para. *(g)* deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(h) any prohibition or restriction in terms of these Regulations or any other legislation, whether in South Africa or in another country, regulating procurement of the services or goods from a registered contractor or any principals of that contractor, prohibiting

Copyright Juta & Company Limited

that contractor to submit a tender offer to an organ of state or authorising an organ of state to reject a tender offer from that contractor;

[Para. *(h)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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.

(k) the expiry date of a contractor's tax clearance certificate.

[Para. *(k)* added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(l) the broad-based black economic empowerment recognition level of a contractor prescribed in terms of the Codes of Good Practice issued under the Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003) from time to time.

[Para. *(l)* added by GN R464 of 2 July 2013 (wef 1 August 2013).]

4 Exemption

(1) Any contractor who is registered as a homebuilder in terms of section 10 of the Housing Consumer Protection Measures Act, 95 of 1998, read with the General Regulations Regarding Housing Consumer Protection Measures, R1406, published by *Gazette* 20658 of 1 December 1999, is exempt from registration in terms of these Regulations for the purpose of construction works in relation to the provision of a home as contemplated in those Regulations.

[Subreg. (1) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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.

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

[Subreg. (3) added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

[Reg. 4 substituted by GN 751 of 22 July 2005.]

5 Targeted development programmes

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.

6 Categories of registration

(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 B-BBEE recognition level of a contractor in terms of an applicable code of good practice issued in terms of section 9 of the Broad Based Black Economic Empowerment Act, 53 of 2003,

[Para. *(d)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Copyright Juta & Company Limited

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.

7 Application for registration as contractor in contractor grading designations 2 to 9

[Heading substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(1) A contractor who wishes to be registered in terms of these Regulations in the categories of registration that relate to contractor grading designations 2 to 9 as contemplated in regulation 12(1)(Table 1) must on the approved form apply to the Board for that registration.

[Subreg. (1) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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 preceding the application;

[Para. *(b)* substituted by GN 842 of 18 August 2006 and by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(c) if so requested by the Board, where the financial statements of a contractor are not audited, supporting evidence of that contractor's turnover as set out [in] the South African Revenue Services Form VAT 201 (return for value added tax) and proof of payment of that value added tax;

[Para. *(c)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(d) in the case of a company or a close corporation, the registration number, a certificate of incorporation and the latest name change, if any, issued in terms of the Companies Act, 1973 (Act 61 of 1973) or the Close Corporations Act, 1984 (Act 69 of 1984), as the case may be and certified copies of the shareholders' certificates of the company;

[Para. *(d)* substituted by GN 842 of 18 August 2006.]

*(d*A*)* in the case of a trust, a copy of trust deed as contemplated in the Trust Property Act, 1988 (Act 58 of 1988);

[Para. *(d*A*)* inserted by GN 842 of 18 August 2006.]

(e) an original tax clearance certificate issued to the contractor by the South African Revenue Service, or in the case of a foreign enterprise, which has not yet performed any contracts within the Republic of South Africa, proof that it has paid all taxes due by it to the government of its country of origin;

[Para. *(e)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Copyright Juta & Company Limited

(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, proof of financial sponsorship of the contractor as contemplated in subregulation (10);

[Para. *(g)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(h) .....

[Para. *(h)* deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(i) in the case of an application relating to the Electrical Engineering - designation EB class of works a certified copy of the current certificate of registration issued by the Electrical Contracting Board of South Africa;

[Para. *(i)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(j) if applicable, certified copies of the contractor's registration certificate issued in terms of the Housing Consumer Protection Measures Act, 1998, (Act 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

*(l*A*)*(i) in a case referred to in regulation 11(4)(ii), (iii), (iv), (v) or (vii), a board resolution of the company or member resolution of the close corporation concerned sanctioning the change of name, reconstruction, amalgamation, takeover or conversion;

(ii) in the case of a scheme of arrangement referred to in regulation 11(4)(vi), the court order sanctioning the scheme of arrangement; or

(iii) in the case of a change in membership or members' interest of a close corporation as contemplated in regulation 11(4)(viii), the certificate referred to in section 31 of the Close Corporations Act, 69 of 1984, stating the current percentage of each member's interest in the corporation;

[Para. *(l*A*)* inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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.

Copyright Juta & Company Limited

(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 60 days from the date of that request, the Board may cancel the application and must refund the annual fees paid by the contractor.

[Subreg. (8) inserted by GN 842 of 18 August 2006 and amended by GN R1224 of 14 November 2008 (wef 1 January 2009).]

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

[Subreg. (9) inserted by GN 842 of 18 August 2006.]

(10) A financial sponsorship referred to in these Regulations must be a collectable financial guarantee by one person to another (the beneficiary)-

(a) for a fixed amount;

(b) is available to the beneficiary as and when required;

(c) to support the operations of the contractor concerned to complete his or her projects;

(d) if applicable, available to a third person, such as a bank, to advance funds or such as a supplier, to advance a line of credit;

(e) if applicable, in a form acceptable to any financial institution in South Africa as defined in the Financial Services Board Act, 97 of 1990; and

(f) if not provided by a financial institution, to an amount which does not exceed 15% of the sponsor's net asset value as determined from the sponsor's latest financial statements.

[Subreg. (10) added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(11) The registration particulars reflected on the register of contractors on the Board's website serves as the registration certificate as contemplated in section 16(7) of the Act.

[Subreg. (11) added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

7A Application for and registration in contractor grading designation 1

(1) A contractor who wishes to be registered in terms of these Regulations in contractor grading designation 1 as contemplated in regulation 6 may apply in the approved form to the Board to be registered in that contractor grading designation.

(2) An application referred to in subregulation (1), must be accompanied by-

(a) 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;

(b) in the case of a company or a close corporation, the registration number, a certificate of incorporation and the latest name change, if any, issued in terms of the Companies Act, 1973 or the Close Corporations Act, 1984, as the case may be and certified copies of the shareholders' certificates of the Company;

(c) an original tax clearance certificate issued by the South African Revenue Service;

Copyright Juta & Company Limited

(d) if an application relates to the Electrical Engineering - designation EE class of works, a certified copy of his or her electrical contractor licence issued by the Electrical Contracting Board of South Africa; and

(e) any other information required by the Board in relation to the category of registration of a contractor.

(3) If an application in terms of this regulation is made on the official Board website, the supporting documentation referred to in subregulation (2), together with the confirmation of particulars signed by the applicant, must be submitted to the Board by mail or by hand and the application is not considered to have been duly completed until that submission has been received by the Board.

[Subreg. (3) amended by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(4) 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.

(5) 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.

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

(7) A person designated by the Chief Executive Officer must enter-

(a) the particulars from the supporting documents listed in subregulation (2);

(b) the address and contact particulars,

of the applicant on the registration system.

(8) If the applicant has not completed a registration form the designated person must print a declaration containing the information captured in terms of subregulation (7) and the applicant must, after ascertaining that the information captured on the registration system is correct, the designated person must retain the registration form or declaration, as the case may be, together with supporting documentation provided in terms of subregulation (2).

(9) The designated person must, on payment of the administration fee-

(a) register the applicant as a contractor on the register of contractors;

(b) update the register of contractors accordingly; and

(c) issue to the contractor a receipt, which contains the contractor registration number for the payment of the administration fee.

(10) The registration particulars reflected on the register of contractors on the official Board website serves as the registration certificate as contemplated in section 16(7) of the Act.

[Subreg. (10) amended by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(11) Regulations 7 and 10 to 12 and 14 do not apply to an application for registration in the contractor grading designation 1.

[Reg. 7A inserted by GN 1121 of 23 November 2007 (wef 1 January 2007).]

8 Application for amendment of category status

(1) An application in terms of section 17(2) of the Act must be done on the approved form and the contractor concerned must ensure that any information required in terms of

Copyright Juta & Company Limited

regulation 7(4) that has changed since that contractor's first application or latest confirmation of particulars, is supported by the evidence required in terms of regulation 7(4).

(2) Subject to subregulation (1), regulations 7 and 10 apply to an application in terms of section 17(2) with the necessary changes.

[Reg. 8 amended by GN 842 of 18 August 2006 and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

9 Renewal of registration

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

10 Procedure in relation to registration of contractor in contractor grading designation 2 to 9

(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) Subject to subregulations (4) and (5), the assessor 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.

(3) On registration, the assessor must certify on the register of contractors that the contractor is registered and that certification serves as the registration certificate referred to in section 16(7) of the Act.

(4) The assessor may, if he or she 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.

(5) The contractor may, if the contractor does not agree with the categorization decided on by the assessor, subject to section 3 of the Promotion of Administrative Justice Act, 3 of 2000, submit reasons to the assessor for reviewing the assessment.

(6) The registration of a contractor is subject to the conditions that the contractor concerned-

(a) complies with the code of conduct for contractors; and

(b) subject to regulations 8 and 36, complies with the requirements in terms of these Regulations for the category in which that contractor is registered.

[Reg. 10 amended by GN 751 of 22 July 2005 and by GN 842 of 18 August 2006 and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

11 Manner of determination of contractor grading designation

(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 capacity of a contractor is determined by establishing whether:

(a) the contractor's best annual turnover over the two financial years immediately preceding the application equals or exceeds the minimum annual turnover in the third column of Table 1 determined in relation to the financial capability designation contemplated in regulation 12(1);

(b) the contractor during the five years immediately preceding the application has completed at least one construction works contract of which the total contract value

Copyright Juta & Company Limited

equals or exceeds the amount in the fourth column of Table 1 of the financial capability referred to in regulation 12(1); and

(c) the contractor has available 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).

[Subreg. (2) amended by GN 751 of 22 July 2005 and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

(2A) and (2B) inclusive .....
[Subregs. (2A) and (2B) inclusive inserted by GN R1224 of 14 November 2008 (wef 1 January 2009) and deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(3) Available capital is calculated by adding any financial sponsorship to the sum of the net asset value of a contractor as indicated in the contractor's financial statements, and financial sponsorship-

(a) where the sponsor is a registered contractor or owns 50 per cent or more of the applicant contractor, may constitute up to 100 per cent of the total amount of required available capital;

(b) where the sponsor is not a registered contractor and owns 25 per cent or more of the applicant contractor, may not exceed 75 per cent of the total amount of the required available capital; and

(c) where the contractor is not a registered contractor and the sponsor owns less than 25 per cent of the applicant contractor, may not exceed 50 per cent of the total amount of the required available capital.

[Subreg. (3) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(3A) Despite anything to the contrary in these Regulations, 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.

[Subreg. (3A) inserted by GN 842 of 18 August 2006 and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(4) For the purpose of determining the contractor grading designation of a contractor, the records of one contractor may be transferred to another contractor and treated as if it were the same entity for the purpose of assessment in the case of-

(a) the first contractor being a sole proprietor, partnership or trust who establishes a company or close corporation in terms of the Companies Act, 1973 or the Close Corporations Act, 1984;

(b) a change of name of a company;

(c) the reconstruction of a company;

(d) the amalgamation of companies;

Copyright Juta & Company Limited

(e) the takeover of a company;

(f) a scheme of arrangement in terms of sections 311 to 313 of the Companies Act, 1973;

(g) the conversion of a company to a close corporation in terms of section 27 of the Close Corporations Act, 1984; and

(h) a change in membership or members' interests of a close corporation.

[Subreg. (4) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(4A) A contractor seeking the transfer of records referred to in subregulation (4), must apply to the Board in writing for its approval of such transfer and must furnish such particulars as the Board may require.

[Subreg. (4A) inserted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(4B) The Board must, within 30 working days from receipt of a duly completed application referred to in subregulation (4A), notify the contractor of its decision.

[Subreg. (4B) inserted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(5) The works capability of a contractor must be determined by establishing whether-

(a) the contractor has satisfied the requirements contemplated in regulation 12(5) in relation to any specific class of construction works; and

(b) the contractor has during the five years immediately preceding the application completed at least one construction works contract in the category of construction works for which the contractor wishes to register, of which the value equals or exceeds the amount of that works capability designation as contemplated in regulation 12(7).

[Subreg. (5) amended by GN 751 of 22 July 2005 and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

12 Requirements in relation to contractor grading designation

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

TABLE 1

[Table 1 substituted by GN 751 of 22 July 2005, by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

Designation	Upper limit, (R) of tender value range	Best Annual Turnover (50% of Upper Limit of tender value range)	Largest Contract (22.5% of Upper Limit of tender value range. 20% for Grade 2)	Available capital (R) (10% of Upper Limit of tender value range, 5% for Grade 3 & 4)
1	200 000	-	-	-
2	650 000	-	R130 000	-
3	2 000 000	1 000 000	R450 000	100 000
4	4 000 000	2 000 000	R900 000	200 000
5	6 500 000	3 250 000	R1 500 000	650 000
6	13 000 000	6500 000	R3 000 000	1 300 000
7	40 000 000	20 000 000	R9 000 000	4 000 000
8	130 000 000	65 000 000	R30 000 000	13 000 000
9	No Limit	200 000 000	R90 000 000	40 000 000

Copyright Juta & Company Limited

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

(a) .....

[Para. *(a)* deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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) .....

TABLE 2 .....

[Table 2 substituted by GN 751 of 22 July 2005 and deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

[Subreg. (2) deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(3) .....

TABLE 3 .....

[Table 3 deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

[Subreg. (3) deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(4) .....

TABLE 4 .....

[Table 4 amended by GN 751 of 22 July 2005 and deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

TABLE 4A .....

[Table 4A inserted by GN R1224 of 14 November 2008 (wef 1 January 2009) and deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

TABLE 4B .....

[Table 4B inserted by GN R1224 of 14 November 2008 (wef 1 January 2009) and deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

[Subreg. (4) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009) and deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(5) For the class of construction works 'Electrical Engineering Works-designation EB', a contractor must be in possession of a certified copy of the current certificate of registration issued by the Electrical Contracting Board of South Africa.

[Subreg. (5) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(6) .....

[Subreg. (6) deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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:

TABLE 5

Copyright Juta & Company Limited

[Table 5 substituted by GN 751 of 22 July 2005, by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

Works Capability		Largest Contract Executed in The Last 5 Years in The Class Of Construction Works Applied For (R) Largest Contract (22.5% of Upper Limit of tender value range, 20 % for Grade 2)
Designation	**Maximum Value of Contract That A Contractor is Considered Capable of Performing (R)**	
1	200 000	-
2	650 000	130 000
3	2 000 000	450 000
4	4 000 000	900 000
5	6 500 000	1 500 000
6	13 000 000	3 000 000
7	40 000 000	9 000 000
8	130 000 000	30 000 000
9	No Limit	90 000 000

(8) .....

[Subreg. (8) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009) and deleted by GN R464 of 2 July 2013 (wef 1 August 2013).]

13 Board to identify potential emerging enterprise status

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 per cent 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

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

14 .....

TABLE 6 .....

[Table 6 amended by GN 751 of 22 July 2005 and deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

[Reg. 14 deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

15 .....

TABLE 7 .....

[Table 7 amended by GN 751 of 22 July 2005 and deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

[Reg. 15 deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Copyright Juta & Company Limited

16 Foreign enterprise

(1) The contractor grading designation of a contractor who is not based in South Africa, is determined in accordance with these Regulations, but the monetary values are based on the exchange rate in ZAR in relation to-

(a) that contractor's financial statements on the date of the applicable financial year-end; and

(b) the value of construction works projects completed, on the date of the completion of the applicable project.

(2) The values contemplated in subregulation (1) must include value added tax or similar taxation as levied in the contractor's country of origin.

[Reg. 16 substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

17 Tender value range contractor considered capable of undertaking

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 column 2 of that table in the class of the construction works to which the category of registration of that contractor relates.

TABLE 8

[Table 8 substituted by GN 751 of 22 July 2005, by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

Contractor Grading Designation	Less than or equal to (R)
1 (class of construction works)	200 000
2 (class of construction works)	650 000
3 (class of construction works)	2 000 000
4 (class of construction works)	4 000 000
5 (class of construction works)	6 500 000
6 (class of construction works)	13 000 000
7 (class of construction works)	40 000 000
8 (class of construction works)	130 000 000
9 (class of construction works)	No Limit

[Reg. 17 substituted by GN R464 of 2 July 2013 (wef 1 August 2013).]

17A Tender value range adjustments

(1) The Minister must, at least once every three years, after consultation with the Board, determine-

(a) the range of tender values for purposes of determining the values of contracts that contractors are considered capable of undertaking; and

(b) a method for the calculation of the range of tender values contemplated in subregulation (1)*(a)*.

(2) Before making a determination contemplated in this subregulation, the Minister must publish in the *Gazette* a notice-

(a) setting out the proposed range of tender values and method of calculation for purposes of this subregulation; and

(b) inviting written submissions on that proposal within the period stated in the notice, of not less than thirty days from the date of publication of the notice.

Copyright Juta & Company Limited

(3) If the Minister alters the proposed range of tender values and method of calculation contemplated in subregulation 2(a), as a result of a comment, he or she need not publish those alterations before making the determination.

(4) Within six months after publishing a notice in terms of subregulation (2), the Minister must publish in the *Gazette* a notice-

(a) setting out the new range of tender values and method of calculation for purposes of this subregulation; and

(b) the effective date of the range of tender values.

(5) In the event that a subsequent range of tender values referred to in subregulation 17A(1) is not timeously published by the Minister, the last published range of tender values shall notwithstanding the provisions of subregulation 17A(1), remain in force and effect until the publication of the next range of tender values.

(6) Notwithstanding a determination made by the Minister in terms of subregulation (1), a contractor's grading designation will remain unchanged for the duration of the contractor's registration existing at the time of the determination.

[Reg. 17A added by GN R464 of 2 July 2013 (wef 1 August 2013).]

PART III
REGISTER OF PROJECTS (regs 18-22)

18 Registration of projects

(1A) Despite the values determined in Government Notice 692 of 9 June 2004, every project consisting of a single construction works contract-

(a) for the public sector of which the value exceeds R200 000.00; or

(b) for the private sector and a public entity listed in Schedule 2 of the Public Finance Management Act, 1 of 1999, of which the value exceeds R10 million, must be registered in accordance with this Part.

[Subreg. (1A) inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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

Copyright Juta & Company Limited

(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.

19 Exemption

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

(a) .....

[Para. *(a)* deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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,

(c) for any maintenance required to maintain all plant infrastructure in operational condition and any plant modifications necessary for the optimisation of such plant associated with continuous process systems involving chemical works, metallurgical works, oil and gas wells, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances and other chemical processes; or

[Para. *(c)* added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(d) or installation, repair, maintenance or alteration of mechanical materials handling systems and lifting machinery in relation to movement of containers and bulk material.

[Para. *(d)* added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

is exempt from these Regulations.

[Reg. 19 substituted by GN 842 of 18 August 2006.]

20 Representative of employer

(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.

21 Reporting

(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,

Copyright Juta & Company Limited

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.

22 Best practice project assessment scheme

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.

PART IV
INVITATION, AWARD AND MANAGEMENT OF CONSTRUCTION WORKS CONTRACTS (regs 23-26)

23 Application

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.

[Reg. 23 substituted by GN 842 of 18 August 2006.]

24 Preparation for construction procurement

Every client or employer who is inviting calls for expression of interest or soliciting competitive tenders without first calling for expressions of interest in the construction industry must publish that invitation to tender on the Board's 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* 25767 of 5 December 2003; or

(b) if applicable, the Municipal Supply Chain Management Regulations, published by Government Notice 868 of 2005, in *Gazette* number 27636 of 30 May 2005; and

(c) the Standard for Uniformity in Construction Procurement, published by Board Notice 62 of 9 June 2004 in *Gazette* 26427 of 9 June 2004.

[Reg. 24 substituted by GN 751 of 22 July 2005 and amended by GN R1224 of 14 November 2008 (wef 1 January 2009).]

25 Invitation of tender or expression of interest for construction works contracts

(1) Subject to subregulation (1A), 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 that contract.

Copyright Juta & Company Limited

[Subreg. (1) substituted by GN 751 of 22 July 2005 and by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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 after the closing date for those submissions.

[Subreg. (1A) substituted by GN 751 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.

[Subreg. (1B) inserted by GN 842 of 18 August 2006.]

(2) Despite subregulation (1A), 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.

[Subreg. (2) amended by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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

Copyright Juta & Company Limited

per cent of the lower limit of that tender value range, the tender value range immediately below that tender.

[Para. *(a)* substituted by GN 842 of 18 August 2006.]

(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 of not lower than one level below the required grading designation in the class of construction works under consideration and possesses the required recognition status; and

[Para. *(a)* substituted by GN R464 of 2 July 2013 (wef 1 August 2013).]

(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 either in accordance with table 9 or in accordance with regulation 11 but is calculated based on-

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

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

but where-

(i) a contractor is graded solely on the basis of the available 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 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)* and *(b)* that the contractor was not assessed on, in accordance with the following formula;

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

where:

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

B - minimum value of average annual available capital or 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 available capital or average turnover, corresponding to A, required to determine the capability of a contractor in one contractor

Copyright Juta & Company Limited

grading designation higher than the one in which the contractor is registered [see table I in regulation 12(1)];

D = minimum value of average annual available capital or average turnover or 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 available capital or average turnover or 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)].

TABLE 9

[Table 9 added by GN R1224 of 14 November 2008 (wef 1 January 2009) and substituted by GN R464 of 2 July 2013 (wef 1 August 2013).]

Designation	**Deemed to satisfy joint venture arrangements**
3	**Three** contractors registered in contractor grading designation **2**
4	**Three** contractors registered in contractor grading designation **3**
5	**Two** contractors registered in contractor grading designation **4** **One** contractor registered in contractor grading designation **4 and** **two** contractors registered in contractor grading designation **3**
6	**Two** contractors registered in contractor grading designation **5** **One** contractor registered in contractor grading designation **5 and** **two** contractors registered in contractor grading designation **4**
7	**Two** contractors registered in contractor grading designation **6** **One** contractor registered in contractor grading designation **6 and** **two** contractors registered in contractor grading designation **5**
8	**Three** contractors registered in contractor grading designation **7**
9	**Three** contractors registered in contractor grading designation **8**

[Subreg. (6) substituted by GN 751 of 22 July 2005, by GN R1224 of 14 November 2008 (wef 1 January 2009) and by GN R464 of 2 July 2013 (wef 1 August 2013).]

(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.

[Subreg. (7A) inserted by GN 842 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

Copyright Juta & Company Limited

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.

(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.

26 Restriction or prohibition

(1) The presiding officer of a court, an arbitrator or, adjudicator, may, at the outcome of litigation, arbitration or adjudication and if that litigation, arbitration or adjudication has found a contractor to be in default in terms of the contract concerned-

(a) place a restriction on a contractor or any principal of that contractor in submitting a tender offer to an organ of state for a construction works project; or

(b) prohibit a contractor or any principal of that contractor to submit a tender offer to an organ of state for a construction works project, for a period not exceeding ten years.

(2) The presiding officer of a court, an arbitrator or adjudicator referred to in subregulation (1) may not take action in terms of that subregulation if the litigation or arbitration has not been finalised or the contractor concerned has not accepted the outcome of the adjudication, but if that contractor has not within a period of 21 working days after that finding filed any further legal action with the appropriate person or legal institution, that presiding officer of a court, an arbitrator or, adjudicator may proceed to act in terms of subregulation (1).

(3) The presiding officer of a court, an arbitrator or adjudicator referred to in subregulation (1) who acts in terms of that subregulation, must on the approved form notify the Board of such restriction or prohibition and the reason therefore, as well as the period of such restriction or prohibition.

(4) The Board must update the register of contractors indicating that a contractor or a principal of a contractor has been restricted in submitting tender offers or prohibited from submitting tender offers as contemplated in subregulation (1) and the register must reflect-

(a) the name of the registered contractor concerned;

(b) the period of such restriction or prohibition;

(c) the reason for such restriction; and

Copyright Juta & Company Limited

(d) the name of the organ of state that was party to the agreement in terms of which the contractor concerned was found to be in default.

[Reg. 26 substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

PART V
LEGAL PROCEDURE AND EVIDENCE (regs 27-34)

27 Suspension and deregistration

(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 subregulation (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 in terms of regulation 29 of any non-compliance with Code of Conduct.

[Para. *(c)* substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

27A Application of code of conduct

The code of conduct applies to all construction-related procurement and all participants involved in the procurement process, from the application for registration as a contractor, through to the tender process and the registration and completion of a project, including participation in the best practice project assessment scheme and the best practice contractor recognition scheme.

[Reg. 27A inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

28 Preliminary investigation of complaint or suspicion

(1) If the Board has-

(a) received a complaint from any person who is aggrieved by an action taken in terms of the code of conduct or an omission to take such action; or

(b) reasonable grounds to suspect that a person has acted contrary to, or has omitted to act in terms of, the code of conduct, the Board must appoint an investigating officer to investigate that complaint or suspicion.

(2) If the complaint or the suspicion implicates a person who is employed by an organ of state other than the Board, the Board must-

Copyright Juta & Company Limited

(a) refer that complaint or suspicion to the accounting officer or accounting authority or any other supervisory person or body, having control over that person, of the organ of state concerned for the purpose of dealing with the complaint in terms of the applicable disciplinary procedure and submit a copy of the referral to the Audit Committee of the organ of state concerned and the Auditor-General; or

(b) if the person against whom the complaint is lodged or the suspicion exists is the accounting officer or a member of the accounting authority, refer that complaint or suspicion to the Audit Committee of the organ of state concerned and the Auditor-General.

(3) The investigating officer must, before commencing with the preliminary investigation, verify whether the following criteria have been met:

(a) the Board has jurisdiction to investigate the complaint or suspicion; and

(b) reasonable grounds exist for the complaint or suspicion.

(4) If, after the verification contemplated in subregulation (3), the investigation officer finds that any of the criteria in that subregulation have not been met, he or she must inform the Board thereof, together with the reasons for his or her finding.

(5) Upon receipt of the finding of the investigation officer contemplated in subregulation (4), the Board must inform the complainant of its finding, if the identity of the complainant is known.

(6) If the investigating officer is satisfied that any of the criteria referred to in subregulation (3) have been met, he or she must-

(a) investigate the matter; and

(b) obtain evidence to determine whether the Board may take any action as contemplated in the Act and these Regulations against the person implicated by the complaint or suspicion.

(7) An investigating officer may not question the person implicated by the complaint or suspicion unless he or she informs that person that he or she-

(a) has the right to be assisted or represented by another person;

(b) has the right to be assisted by an interpreter;

(c) is not obliged to make any statement; and

(d) that any statement so made may be used in evidence against him or her.

(8) The investigating officer must, after the conclusion of the investigation, submit a report to the Board which contains at least-

(a) the evidence obtained;

(b) his or her conclusions and the reasons therefore;

(c) whether, in the opinion of the investigating officer, the person implicated by the complaint or suspicion or any other person failed to comply with the provisions of the code of conduct; and

(d) a recommendation regarding the action that the Board should take.

(9) The Board must, after due consideration of the report of the investigating officer referred to in subregulation (8), act in accordance with the recommendation of the investigating officer if the Board is satisfied that sufficient grounds exist for such action.

Copyright Juta & Company Limited

(10) If an organ of state, other than the Board, undertakes an investigation and the finding of that organ of state indicates that a person acted contrary to or has omitted to act in terms of the code of conduct, that organ of state must provide the Board with its findings and all other documentation relevant to its investigation.

(11) Upon receipt of the findings and documentation contemplated in subregulation (10) the Board must refer the matter to the investigating officer appointed by the Board as contemplated in subregulation (1).

(12) The investigation officer must, within 30 days of the referral by the Board referred to in subregulation (11) submit a report to the Board which contains at least-

(a) a statement on whether, in the opinion of the investigating officer, the person implicated by the investigation of the organ of state has acted contrary to or has omitted to act in terms of the code of conduct or failed to comply with the provisions of the Code of Conduct; and

(b) a recommendation regarding the action that the Board should take.

[Reg. 28 substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

29 Formal inquiry

(1) If, after due consideration of the report of the investigation officer referred to in regulation 28(8) or 28(12), the Board is satisfied that sufficient grounds exist for the institution of a formal inquiry into the complaint or suspicion, it must-

(a) notify the person referred to in regulation 28(8)*(c)* or 28(12)*(a)*, in this regulation hereafter referred to as the respondent, in writing-

(i) of its decision to institute a formal inquiry;

(ii) of the details and nature of the complaint or suspicion that was investigated and the charges;

(iii) that the respondent must, within 21 days after receipt of the notification, in writing-

(aa) admit or deny the charges; and

(bb) indicate whether he or she requests the assistance of an interpreter;

(b) attach an extract of Part V of these Regulations to the notice referred to in paragraph *(a)*; and

(c) appoint a committee as contemplated in subregulation (6), hereafter referred to as the investigating committee.

(2) If the charges referred to in subregulation (1)*(a)*(ii) relate to a possible transgression of section 18 of the Act, the Board must serve a copy of that notice on the client or employer with whom the respondent has entered into, or attempted to enter into a contract to perform the construction works concerned.

(3) The Board must, after the expiry of the 21 day period referred to in subregulation (1)*(a)*(iii), notify the respondent in writing-

(a) of the date, time and place where the formal inquiry will be held by the investigating committee, irrespective of whether the respondent replied to the notice or not, or whether he or she admitted or denied the charges;

(b) that should the respondent fail to appear, the Board may request the investigating committee to take cognisance of the evidence in the respondent's absence;

Copyright Juta & Company Limited

(c) that should the investigating committee grant the Board's request contemplated in paragraph *(b)*, the Board may submit the evidence to the investigating committee; and

(d) that the Board may request the investigating committee to make a finding in the respondent's absence based on the evidence at hand and to decide on an appropriate sanction;

(4) The investigating committee may find the respondent guilty of the charge and sanction him or her in accordance with subregulation (15) without hearing any evidence if the respondent admits that he or she is guilty of the charge as contemplated in subregulation (1)*(a)*(ii) and-

(a) provides mitigating circumstances to the investigating committee; or

(b) if the respondent does not provide mitigating circumstances to the investigating committee, but the investigating committee is satisfied that a reasonable time had lapsed for the respondent to provide mitigating circumstances and the respondent had not done so despite being notified that the proceedings may continue in his or her absence if he or she fails to provide the investigating committee with mitigating circumstances.

(5) If the respondent, after being duly notified by the Board as contemplated in subregulation (3), fails to attend the proceedings, the investigating committee may proceed with the formal inquiry in the absence of the respondent if-

(a) there is no information at the disposal of the investigating committee to show sufficient cause for the respondent's failure to attend the proceedings;

(b) the Board and the respondent had not reached an agreement regarding motion proceedings; and

(c) it is fair, reasonable and in the interest of justice to do so in the circumstances.

(6) The investigating committee appointed by the Board in terms of subregulation (1)*(c)* must consist of at least-

(a) two persons who have expertise in the fields relevant to the inquiry; and

(b) a person qualified in law, who must act as the chairperson of the investigating committee.

(7) The investigating committee may, for the purposes of this regulation, appoint a person to assist it in the performance of its functions.

(8)*(a)* The investigating committee may, subject to section 29 of the Act, for the purposes of a formal inquiry, subpoena any person-

(i) who may be able to give material information concerning the subject of the formal inquiry; 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 formal inquiry, to appear before the investigating committee at the time and place specified in the subpoena, to be questioned or to produce that book, document or object.

(b) A subpoena issued in terms of paragraph *(a)*, must-

(i) be in the form as shown in Schedule 4;

Copyright Juta & Company Limited

(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 person concerned as contemplated in regulation 32D.

(9) The investigating committee may retain a book, document or object produced in terms of subregulation (8) for the duration of the formal inquiry.

(10) The chairperson of the investigating committee may, at the formal inquiry, call upon and administer an oath or take an affirmation from any witness who was subpoenaed in terms of subregulation (8).

(11)*(a)* The investigating committee may, subject to paragraph *(b)*, permit any information it requires to discharge its duties in terms of this Part, including evidence on mitigating and aggravating circumstances, to be brought to its attention through a process similar to motion proceedings (excluding *ex parte* applications),

(b) The investigating committee may only permit a process similar to motion proceedings-

(i) if the Board and the respondent or his or her representative agree thereto;

(ii) if there is not a real dispute between the Board and the respondent or his or her representative, relating to any material question of fact; and

(iii) in respect of those relevant facts which is not in real dispute.

(c) The decision of the investigating committee to permit a process similar to motion proceedings does not prevent the investigating committee, Board or respondent or his or her representative, from permitting, requesting or insisting, as the case may be, that verbal evidence be led on facts pertaining to a dispute between the Board and the respondent and his or her representative.

(d) Despite this subregulation, the investigating committee may only permit alternative dispute resolution proceedings if the principles of natural justice will not be compromised.

(12) At a formal inquiry the respondent-

(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) may request the assistance of an interpreter;

(iv) has the right to be heard;

(v) may call witnesses;

(vi) may cross-examine any person called as a witness in support of the charge;

(vii) may have access to documents produced in evidence;

(viii) may call anyone to produce any book, document or object in his or her possession or custody or under his or her control; and

(ix) may advance arguments in support of his or her defence;

(b) (i) may admit at any time before the investigating committee gives its verdict, that he or she is guilty of the charge referred to in subregulation (1)*(a)*(ii), despite the fact that he or she may have denied responsibility in terms of subregulation (1)*(a)*(iii); and

(ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be found guilty of the charge referred to in subregulation (1)*(a)*(ii); and

Copyright Juta & Company Limited

(c) may, in the event of him or her being found guilty in terms of subregulation (15)*(a)*, present mitigating circumstances to the investigating committee by addressing the investigating committee, calling witnesses or presenting facts to the investigating committee through any process permitted by the investigating committee.

(13)*(a)* A witness in a formal inquiry 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 in a formal inquiry must-

(i) remain in attendance until excused by the investigating committee from further attendance;

(ii) appear at a later date and time to continue with his or her testimony, as warned by the investigating committee.

(c) 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 investigating committee by, a witness in the formal inquiry.

(d) 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-

(i) the record is accompanied by a certificate from the chairperson of that commission; and

(ii) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(14) If the respondent has been found guilty of a criminal offence in a court of law and the conduct with which the respondent is charged with in terms of subregulation (1)*(a)*(ii) is an element or the subject matter of that criminal offence, a copy of the record of the criminal proceedings, certified in terms of section 235 of the Criminal Procedure Act, 51 of 1977, is sufficient proof of the commission by the respondent of that offence, if it is proven that-

(a) the respondent is the same person who was convicted of that criminal offence; and

(b) no appeal or review proceedings in terms of Chapters 30 and 31 of the Criminal Procedure Act, 1977, are pending against the criminal judgement of the court which convicted the respondent of that criminal offence.

(15)*(a)* After the conclusion of the formal inquiry the investigating committee must within 30 days make a finding as to whether the respondent is guilty of the charges brought against him or her in terms of subregulation (1)*(a)*(ii).

(b) If the investigating committee finds the respondent guilty in terms of paragraph *(a)*, the investigating committee must-

(i) inform the respondent of the finding and clearly state the reasons for the finding;

(ii) take cognisance of any aggravating or mitigating circumstances; and

Copyright Juta & Company Limited

(iii) sanction the respondent as contemplated in subregulation (18).

(16) The investigating committee may postpone the formal inquiry at any time before passing sanction, if it is reasonable and justifiable in the circumstances to do so.

(17)*(a)* Where the investigating committee consists of more than three members, and certain members do not agree with the investigating committee's finding, the decision of the majority of the members is the finding of the investigating committee.

(b) If the investigating committee consists of an even number of members and there is a split decision on any finding, the Chairperson has an additional deciding vote.

(18) The sanctions which the investigating committee may impose include-

(a) ordering the removal of the name of a contractor from the register in accordance with section 19 of the Act where the charge relates to a transgression of section 18(1) of the Act;

(b) issuing a warning to the respondent, which warning remains valid for a period not exceeding one year;

(c) downgrading the respondent's current contractor grading designation in the register by a maximum of two grades, for a period determined by the investigating committee;

(d) imposing a fine not exceeding R100 000.00 on the respondent;

(e) restricting or prohibiting the respondent from participating in public sector construction works procurement for a period of time, which period may not exceed 10 years;

(f) ordering the cancellation of the registration of the respondent and placing a prohibition on the re-application for registration by the respondent as contemplated in subregulation (21);

(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 formal inquiry;

(h) ordering any specific performance relevant to the charges brought against the respondent in terms of subregulation (1)*(a)*(ii); and

(i) any combination of the sanctions referred to in paragraphs *(a)* to *(h)*.

(19) When imposing a fine as contemplated in subregulation (18)*(d)* the investigating committee may determine the date on which that fine must be paid by the respondent, or the period of repayment and the amount of interim payments permitted.

(20) Where the respondent on whom the committee has imposed a fine was downgraded as contemplated in subregulation (18)*(c)* or restricted or prohibited as contemplated in subregulations (18)*(e)* or *(f)*, the committee may determine that the period of being downgraded or the period of restriction or prohibition be extended if the fine has not been paid on the date determined in terms of subregulation (19), until that fine is paid, but that extension may not exceed the period for which the contractor was downgraded or the period of 10 years as contemplated in subregulation (18)*(e)*.

(21) Any fine imposed by the investigating committee in terms of subregulation (18)*(d)* must be paid into the bank account of the Board.

(22)*(a)* If the investigating committee imposes a sanction as contemplated in subregulation (18)*(f)* it must determine the period for which the respondent may not re-apply

Copyright Juta & Company Limited

for registration, which period may not be longer than five years after the date of the imposition of the sanction.

(b) A prohibition of the investigating committee referred to in paragraph *(a)* includes an application from the respondent under a legal entity different to the one that had been found guilty.

(23) The investigating committee must, within a reasonable period after passing the sanction, notify the respondent-

(a) of his or her right to judicial review of the finding and sanction of the investigating committee in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000; and

(b) in terms of Chapter 3 of the Regulations on Fair Administrative Procedures issued in terms of the Promotion of Administrative Justice Act, 2000-

(i) of his or her right to request reasons for any of the investigating committee's actions in terms of section 5 of the Promotion of Administrative Justice Act, 2000; and

(ii) any other information stipulated in Chapter 3 of the Regulations on Fair Administrative Procedures.

(24) Subject to subregulation (25), any finding or sanction imposed in terms of this regulation comes into effect immediately and the Board must, if applicable, within 5 working days after the hearing has been concluded, update the register of contractors to reflect the outcome of the hearing.

(25) If any judicial review is instituted in terms of the Promotion of Administrative Justice Act, 2000,

(a) the respondent must notify the Board of that review;

(b) the finding or sanction imposed in terms of this regulation is suspended from the date that the judicial review comes to the notice of the Board until that review has been finalised by a court of law; and

(c) if that court sets aside, varies or amends the finding and sanction of the investigating committee, the Board must, if applicable, amend the register accordingly within seven working days after notification of the decision of that court.

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

(27) Any contractor whose registration is endorsed as a result of the findings of the investigating committee must in any subsequent application for registration as a contractor disclose such endorsement and any applicant who fails to disclose such endorsement, is guilty of an offence.

(28) A contractor whose registration is downgraded by the investigating committee in terms of subregulation (18)*(c)*-

(a) may, after the period of downgrading ordered by the investigating committee, apply for the original grading or another or higher grading; and

(b) must disclose in the application referred to in paragraph *(a)* the grade from and to which he or she was downgraded, and any applicant who fails to disclose such downgrading is guilty of an offence.

[Reg. 29 substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

30 Offences

Copyright Juta & Company Limited

(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 of these Regulations;

(c) award a construction works contract contrary to these Regulations; or

(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.

31 Copies of notices to be retained and presumptions

(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.

32 Copies of entry into registers to be evidence

(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 and during a formal inquiry in terms of regulation 29 of these Regulations be admissible as evidence upon the mere production thereof, 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, fax or electronic record from or of which such extract or copy was made.

[Subreg. (1) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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 2 of 2000) be furnished-

(a) to any client who has registered a project in terms of these Regulations;

(c)[sic] to any organ of state; or

(e)[sic] subject to the prior consent of the Minister or any person authorised thereto by the Minister, to a competent authority of another country.

32A Application of Electronic Communications and Transaction Act, 2002

The provisions of sections 15, 18, 22 and 24 of the Electronic Communications Transaction Act, 25 of 2002, apply to the proceedings of the investigating committee, in respect of admissibility, evidential weight and interpretation of data messages.

[Reg. 32A inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

32B Criminal proceedings do not bar formal inquiry

Copyright Juta & Company Limited

The acquittal or the conviction of the respondent by a court of law on a criminal charge does not bar proceedings against him or her under the Regulations, even if the facts would, if proven, constitute the offence he or she has been charged with in the criminal proceedings.

[Reg. 32B inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

32C Electronic signature

(1) If a provision of Part V of the Regulations requires a document to be signed or initialled by or on behalf of a person, it may be effected by use of an electronic signature or an advanced electronic signature as defined in the Electronic Communications and Transactions Act, 25 of 2002.

(2) An unaltered electronically or mechanically generated reproduction of any document may be substituted for the original for any purpose for which the original could be used in terms of the Act.

(3) If a form or document is prescribed by or in terms of the Act, for any purpose

(a) it is sufficient if the person required to prepare or complete such a document does so in a form that satisfies all of the substantive requirements of the prescribed form; and

(b) any deviation from the design or content of the prescribed form does not invalidate the action taken by the person preparing or completing that document, unless the deviation-

(i) negatively affects the substance of the document; or

(ii) is calculated to mislead.

[Reg. 32C inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

32D Serving of notice or subpoena

(1) Any notice or subpoena issued in terms of Part V of the Regulations may be served:

(a) personally;

(b) by leaving a copy of the notice or subpoena at the intended recipient's place of residence with a person apparently in charge of the premises at the time of delivery and who is apparently not less than 16 years of age;

(c) by affixing a copy of the notice or subpoena to the door of the intended recipient's last-known place of residence;

(d) by sending a copy of the notice or subpoena by registered post to the intended recipient's postal address indicated on the Board's website or last known postal address;

(e) by transmitting a copy of the notice or subpoena by telefax or through other electronic communications means to the domain indicated on the Board's website, or last known domain; or

(f) by following any of the above means in serving the notice to a person reasonably believed to appear on behalf of the intended recipient with regard to the subject matter of the notice or subpoena.

(2) The service of any notice or subpoena required to be served in terms of the Regulations must be effected between 06h00 and 20h00 on any day.

Copyright Juta & Company Limited

(3) Where the service of a notice or subpoena is effected by hand, an additional copy of the notice or subpoena must be prepared and the person receiving the notice must be requested to sign and date the copy and return it to the person serving the notice.

(4) Despite the provisions of subregulation (1)-

(a) it is sufficient if the person required to deliver a notice or subpoena does so in a manner that satisfies all of the substantive requirements of this regulation; and

(b) any deviation from the provisions of subregulation (1) does not invalidate the action taken by the person delivering that notice or subpoena, unless the deviation-

(i) reduces the probability that the intended recipient will receive the notice or subpoena; or

(ii) is calculated to mislead.

(5) If the investigating committee referred to in regulation 29 is not satisfied that the service was effected in accordance with these Regulations or if the court is not satisfied that a copy of the notice or subpoena was in fact received by the intended recipient, it may make any order that is reasonable in the circumstances.

[Reg. 32D inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

32E Employer or principal liable

If in any investigation or prosecution in terms of the Act, these Regulations or the code of conduct, it is proven that-

(a) an employee/employer and/or agent/principal relationship existed (depending on the circumstances) at the time of an action; and

(b) the said action by the employee or agent is found by the investigating committee contemplated in regulation 29 or a court not to comply with the Code of Conduct, or to be a transgression of the Act or these Regulations,

that employer or principal is liable for the said action of his or her employee or agent, unless it is proven by the employer or principal on a balance of probabilities that the employer or principal, as the case may be, had no reason to believe that his or her employee or agent had in any way failed to discharge their duties, providing that such absence of belief must be reasonable in the circumstances.

[Reg. 32E inserted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

33 Cognisance may be taken of information contained in register or record

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.

34 Access to information

(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.

(c) subject to the prior consent of the Minister, to a competent authority of another country.

Copyright Juta & Company Limited

[Para. *(c)* added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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.

PART VI
GENERAL (regs 35-39)

35 Determinations in relation to fees

(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 section 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 in contractor grading designations 2 to 9 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 which that contractor is registered, before or on the date of registration and during the two years following, on the date of anniversary of registration.

[Subreg. (2) substituted by GN 1121 of 23 November 2007 (wef 1 January 2007).]

(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 regarded to be a receipt in terms of this subregulation.

[Subreg. (5) substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

36 Change of particulars

(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 her particulars on the approved form.

(3) Despite subregulation (2), a contractor must within three months after the expiry date of his or her tax clearance certificate, submit a current tax clearance certificate to the Board.

[Subreg. (3) added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

37 Approved forms

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

http://www.cidbregisters.org.za:
Telephone Number: 0860 103 353
Fax Number: +27 12 481 9086; or

Copyright Juta & Company Limited

Blocks N & R, SABS Campus
Leyds Street Entrance,
Groenkloof
Pretoria
GAUTENG

38 Transitional measures

(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 2008, 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.

[Subreg. (4) added by GN R1333 of 2004 (wef 12 November 2004) and amended by GN 1121 of 23 November 2007 (wef 1 January 2007).]

(4A) For the purpose of the fair and equitable implementation of these Regulations, the Board may, notwithstanding anything to the contrary contained in these Regulations, until 15 November 2008 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.

[Subreg. (4A) inserted by GN 842 of 18 August 2006 and amended by GN 1121 of 23 November 2007 (wef 1 January 2007).]

(5) Until otherwise determined by the Board by notice in the *Gazette*, a private sector client or employer must report the award of a construction works contract on the Board's website.

[Subreg. (5) added by GN 751 of 22 July 2005, amended by GN 1121 of 23 November 2007 (wef 1 January 2007) and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Copyright Juta & Company Limited

(6) Until otherwise determined by the Board by notice in the *Gazette* 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 client or employer for the private sector the report of the award of a contract and, where applicable, the cancellation of a contract,

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

[Subreg. (6) added by GN 751 of 22 July 2005, amended by GN 1121 of 23 November 2007 (wef 1 January 2007) and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(7) A client or employer is until otherwise determined by the Board by notice in the *Gazette*, exempt from paying the fee referred to in regulation 18(4).

[Subreg. (7) added by GN 751 of 22 July 2005, amended by GN 1121 of 23 November 2007 (wef 1 January 2007) and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(8) Until otherwise determined by the Board by notice in the *Gazette*, the invitation of a tender offer, report of the award of a contract or the cancellation thereof as contemplated in subregulation (6) on the Board's 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.

[Subreg. (8) added by GN 751 of 22 July 2005, amended by GN 1121 of 23 November 2007 (wef 1 January 2007) and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

(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.

[Subreg. (9) added by GN 751 of 22 July 2005.]

(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.

[Subreg. (10) added by GN 751 of 22 July 2005.]

(11) Any Board notice issued under subregulations (4) to (8) by the Board before the commencement of this subregulation remains valid until 15 November 2008, unless that notice is repealed by the Board.

[Subreg. (11) added by GN 1121 of 23 November 2007 (wef 1 January 2007).]

(12) The Board may, with the consent of the Minister, by notice in the *Gazette*, relax any requirement of these Regulations that is reasonably necessary for the exercise of its powers in terms of these Regulations.

[Subreg. (12) added by GN 1121 of 23 November 2007 (wef 1 January 2007).]

Copyright Juta & Company Limited

(13) Despite subregulation (11), any contractor who was registered on 1 January 2009, and who at application for that registration, in terms of relaxation 1 published by Board Notice 66 of 2005, submitted proof of application for professional registration as contemplated in regulation 12(8), but not proof of such registration, must submit that proof on the date on which he or she applies in terms of regulation 8 to amend his or her category status, the date of renewal of his or her registration as referred to in regulation 9 or the date on which he or she must confirm his or her particulars in terms of regulation 36(2).

[Subreg. (13) added by GN R1224 of 14 November 2008 (wef 1 January 2009).]

39 Short title and commencement

(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 .....

[Schedule 1 deleted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

SCHEDULE 2
FEES

Table 1: Registration and Renewal Fees

[Table 1 substituted by GN 1121 of 23 November 2007 (wef 1 January 2007) and by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Item	Fee in ZAR	Empowering section of the Act
1 Administration fee in relation to contractor grading designations 1 and 2;	450.00	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	450.00	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

[Table 2 amended by GN 1121 of 23 November 2007 (wef 1 January 2007) and substituted by GN R1224 of 14 November 2008 (wef 1 January 2009).]

Contractor grading designation	Fee in ZAR	Empowering section of the Act
1 (class of construction works)	0.00	Section 16(8)

Copyright Juta & Company Limited

2 (class of construction works)	250.00	Section 16(8)
3 (class of construction works)	350.00	Section 16(8)
4 (class of construction works)	900.00	Section 16(8)
5 (class of construction works)	1750.00	Section 16(8)
6 (class of construction works)	3500.00	Section 16(8)
7 (class of construction works)	9000.00	Section 16(8)
8 (class of construction works)	29000.00	Section 16(8)
9 (class of construction works)	55000.00	Section 16(8)

SCHEDULE 3
CLASSES OF CONSTRUCTION WORKS

[Schedule 3 substituted by GN R1224 of 14 November 2008 (wef 1 January 2009) and amended by GN R464 of 2 July 2013 (wef 1 August 2013).]

Description	Designa-tion	Definition	Basic works types	Examples
Civil engineering works	**CE**	Construction works that are primarily concerned with materials such as steel, concrete, earth and rock and their application in the development, extension, installation, maintenance, removal, renovation, alteration, or dismantling of building and engineering infrastructure	Water, sewerage, roads, railways, harbours and transport, urban development and municipal services	Structures such as a cooling tower, bridge, culvert, dam, grand stand, road, railway, reservoir, runway, swimming pool, silo or tunnel The results of operations such as dredging, earthworks and geotechnical processes. Township services, water treatment and supply, sewerage works, sanitation, soil conservation works, irrigation works, storm-water and drainage works, coastal works, ports, harbours, airports and pipelines
Electrical engineering works (Infrastructure)	**EP**	Construction works that are primarily concerned with development, extension, installation, removal, renovation, alteration or dismantling of engineering infrastructure: *(a)* relating to the generation, transmission and distribution of electricity; or *(b)* which cannot be classified as EB.	Electrical power generation, transmission, control and distribution equipment and systems.	Power generation Street and area lighting Substations and protection systems Township reticulations Transmission Lines Supervisory control and data acquisition systems
Electrical engineering works (buildings)	**EB**	Construction works that are primarily concerned with the installation, extension, modification or repair of electrical installations in or on any premises used for the transmission of electricity from a point of control to a point of consumption, including any article forming part of such an installation	All electrical equipment forming an integral and permanent part of buildings and/or structures, including any wiring, cable jointing and laying and electrical overhead line construction	Electrical installations in buildings Electrical reticulations within a plot of land (erf) or building site Standby plant and uninterrupted power supply Verification and certification of electrical installations on premises

Copyright Juta & Company Limited

Description	Designa-tion	Definition	Basic works types	Examples
General building works	**GB**	Construction works that: *(a)* are primarily concerned with the development, extension, installation, renewal, renovation, alteration, or dismantling of a 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 specialist works.	Buildings and ancillary works other than those categorised as being: *(c)* civil engineering works; *(d)* electrical engineering works; *(e)* mechanical engineering works; or *(f)* specialist works.	Buildings for domestic, industrial, institutional or commercial occupancies Car ports ..... [Item deleted by GN R464 of 2 July 2013 (wef 1 August 2013).] Stores Walls

Description	Designa-tion	Definition	Basic works types	Examples
Mechanical engineering works	**ME**	Construction works that are primarily concerned with the development, extension, installation, removal, alteration, renewal of engineering infrastructure for gas transmission and distribution, solid waste disposal, heating, ventilation and cooling,chemical works, metallurgical works, manufacturing, food processing and, materials handling	Machine systems including those relating to the environment of building interiors: *(a)* gas transmission and *(b)* pipelines installations *(c)* solid waste disposal *(d)* materials handling, lifting machinery, heating, ventilation and cooling, pumps, *(e)* continuous process systems *(f)* chemical works, metallurgical works, manufacturing, food processing such as that in concentrator machinery and apparatus, oil and gas wells, smelters, cyanide plants, acid plants, metallurgical machinery, equipment and	Air-conditioning and mechanical ventilation Boiler installations and steam distribution Central heating Centralised hot water generation Cranes and hoists distribution systems Dust and sawdust extraction Compressed air, gas and vacuum installations Conveyor and materials handling installations Continuous process systems involving chemical works, metallurgical works, oil and gas wells, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances and other chemical processes Kitchen equipment Laundry equipment Lift installations and escalators

Copyright Juta & Company Limited

			apparatus and works necessary for the, beneficiation of metals, minerals, rocks, petroleum and organic substances or other chemical processes.	Refrigeration and cold rooms Waste handling systems (including compactors)
Specialist works	**SB**	A subset of construction	The extension, installation, repair, maintenance or renewal, or removal, of asphalt	

Description	Designa-tion	Definition	Basic works types	Examples
	SC	works identified and defined by the Board that involves specialist capabilities for its execution	The development, extension, installation, removal, and dismantling, as relevant, associated with building excavations, shaft sinking and lateral earth support	
	SD		The development, extension, installation, repair, renewal, removal, or alteration of corrosion protection systems (cathodic, anodic and electrolytic)	
	SE		Demolition of buildings and engineering infrastructure and blasting	
	SF		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of fire prevention and protection infrastructure (drencher and sprinkler systems and fire installation)	
	SG		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of glazing, curtain walls and shop fronts	
	SH		The development, extension, installation, maintenance, renewal, removal, alteration or dismantling, as relevant, of landscaping, irrigation and horticultural works	
	SI		The development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration or, dismantling of lifts, escalators, travellators and hoisting machinery	
	SJ		The development, installation, removal, or dismantling, as relevant, of piles and other specialized foundations for buildings and structures	
	SK		The installation, renewal, removal, alteration or dismantling, as relevant, road markings and signage	
	SL		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of structural steelwork and scaffolding	
	SM		Timber buildings and structures	
	SN		The extension, installation, repair, maintenance, renewal, removal, renovation or alteration, as relevant, of the waterproofing of basements, roofs and walls using specialist systems.	
	SO		The development, extension, installation, renewal, removal, alteration or dismantling or demolition of water installations and soil and waste water drainage associated with buildings (wet services, plumbing)	
	SQ		The development, extension, installation, repairs, dismantling of precast walls, installation of wire perimeter fencing, diamond perimeter fencing, palisade steel fencing with posts and stay at internals. [Item substituted by GN R464 of 2 July 2013 (wef 1 August 2013).]	

Copyright Juta & Company Limited

SCHEDULE 4
SUBPOENA

SUBPOENA

In terms of section 29 of the Construction Industry Development Board Act, 2000 (Act 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

---

[i] *Editor's note:* the date of commencement is possibly an error and should perhaps read 1 January 2008.

[ii] Transitional measures

(1) An application for registration as a contractor that was made before the commencement of these Construction Industry Development Amendment Regulations, 2008, may until 31 March 2009 be assessed in accordance with the requirements for registration as a contractor contained in the Regulations before the commencement of these Regulations, but any new application that is made after the commencement of these Regulations, must be made and evaluated in accordance with the Regulations as amended.

(2) Any renewal process or update of particulars that has been initiated by the Board may be finalised in terms of the Regulations before the commencement of these Regulations.

(3) Any investigation or prosecution initiated before the commencement of these Construction Industry Development Amendment Regulations, 2008, must be finalised in accordance with the Regulations before these Regulations commenced.

(4) A tender invitation that was published before the commencement of these Construction Industry Development Amendment Regulations, 2008, must be evaluated in accordance with the Regulations that were applicable at the time of invitation and in accordance with the conditions of tender specified

Copyright Juta & Company Limited

in the tender data, but in the case of the classes of works SA (Alarms, security and access control systems), a contractor who submits a tender offer that relates to those classes of works, may not be penalised for not being registered in terms of these Regulations.

(5) A contractor that was registered in the specialist classes of works SA (Alarms, security and access control systems) and SP [Building of Homes as contemplated in the Housing Consumer Protection Measures Act (Act 95 of 1998)] is entitled to a *pro rata* refund of the annual fees paid by him or her in terms of section 16(2) of the Act, calculated from the date of commencement of these Regulations to the date on which the next annual fee for the contractor concerned is payable.

(6) The Board may in accordance with the information available in the register of contractors, amend the class of works reflected in the category of registration of a contractor if that category of registration reflects the electrical engineering (EE) class of works.

GN R1224 of 14 November 2008 wef 1 January 2009.

[iii] Transitional measures:

(1) For the purposes of these transitional measures, **'effective date'** means the date when these Regulations come into effect.

(2) An application for registration or renewal on the Register of Contractors, that-

(a) was received before the effective date, may be assessed and evaluated in accordance with the requirements for registration contained in these Regulations, provided that the outcome results in a higher contractor grading designation; or

(b) is received after the effective date, must be assessed and evaluated in accordance with these Regulations.

(3) An investigation or prosecution initiated before the effective date must be finalised in accordance with the Regulations that were applicable before these Regulations.

(4) A tender invitation that was published before the effective date must be evaluated in accordance with the Regulations that were applicable at the time of invitation and in accordance with the conditions of tender specified in the tender data.

Copyright Juta & Company Limited