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**GENERAL NOTICE**

**Public Works, Department of**

*General Notice*

439 Construction Industry Development Board Act (38/2000): Amendment of regulations: For public comment ..... 3 30966

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# GENERAL NOTICE

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## NOTICE 439 OF 2008

### DEPARTMENT OF PUBLIC WORKS

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

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The Minister of Public Works has under section 33 of the Construction Industry Development Board Act, 2000, (Act No. 38 of 2000) (the Act), made the regulations set out in the Schedule and is publishing it for public comment. Comments must be submitted **BEFORE 30 MAY 2008** and must be addressed to:

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8 April 2008

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GAUTENG

*Explanatory notes are provided after a regulation amendment except where the amendment is self-explanatory and before amendments where required because of the length of the regulation.*

## SCHEDULE

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**1 Definitions**

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

**“the Regulations”** means the Construction Industry Development Regulations, published by Government Notice No. 692 in Gazette No. 26427 of 9 June 2004 as amended by Government Notice No. 1333 of 12 November 2004 published in Government Gazette No. 26991 of 12 November 2004, Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, and Government Notice No. 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

## **2 Amendment of regulation 1**

Regulation 1 of the Regulations is amended by-

- (a) the insertion of the following definition after the definition of “approved”:  
**“available capital”** means the amount calculated in accordance with regulation 11(3); “;
- (b) the substitution for the definition of “financial sponsorship” of the following definition:  
**“financial sponsorship”** means a financial sponsorship contemplated in regulation 7(10); “;
- (c) the deletion of the definition of “employable capital”;
- (d) the insertion of the following definition after the definition of “joint venture”:  
**“net asset value”** means the sum of a contractor’s equity, retained income and shareholders’ or members’ loans;’ and
- (e) the deletion of the definition of “NHBRC”.

## **3 Amendment of regulation 3**

Regulation 3 of the Regulations is amended by-

- (a) the deletion of paragraph (g); and

(b) the substitution for paragraph (h) of the following paragraph:

“(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 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;”.

**Explanatory Note:**

This regulation is consequential to the amendment of regulations 26 and 29 of the Regulations. The proposed amendment to regulation 4 also removes the requirement for contractors to submit proof of registration with an emerging contractor development scheme. This information could be captured in the registration form in order to feed information into the National Contractor Development Programme. This information could also be used to inform registration requirements in order to consider aligning the promotion of grade 1 contractors who have had exposure to development and training

**4 Amendment of regulation 4**

Regulation 4 of the Regulations is amended by-

(a) the substitution for subregulation (1) of the following subregulation:

“(1) Any contractor who is registered as a homebuilder in terms of the Housing Consumer Protection Measures Act, 95 of 1998: General Regulations Regarding Housing Consumer Protection Measures, R.1406, published by *Gazette* No. 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.”; and

(b) the insertion of the following subregulation after subregulation (2):

“(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.”.

**Explanatory Note:**

The CIDB investigated the possibility of merging the Register of Contractors and the NHBRC register for homebuilders. It was concluded that there is not sufficient commonality to support such a merger. The exemption of contractors from registering with the CIDB is amplified to ensure the understanding with public sector clients that contractors and projects are exempt from CIDB registration only in relation to top structures and not in relation to the complete housing project. Regulation 4 gives effect to these findings.

In addition, this amendment provides for the exemption of contractors who undertake projects substantially consisting of supplies from having to be registered.

## **5 Amendment of regulation 6**

Regulation 6 of the Regulations is amended by the substitution for paragraph (d) in subregulation (1) of the following paragraph:

“(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, 2003,”.

**Explanatory note:**

This amendment provides for a reference to the Broad Based Black Economic Empowerment Act, 2003, which had not yet commenced at the initial publication of the Regulations. The CIDB intends to align the Regulations in accordance with the Sector Code



as soon as it is finalized and on the accreditation of agencies that will certify contractors as BBB-E compliant.

## **6 Amendment of regulation 7**

Regulation 7 of the Regulations is amended by-

(a) the substitution of the heading of regulation 7 for the following heading:

### **“7. Application for registration as contractor in contractor grading designations 2 to 9”**

(b) the substitution for subregulation (1) of the following subregulation:

“(1) A contractor who wishes to be registered in terms of these Regulations in contractor grading designations 2 to 9 as contemplated in regulation 6 must on the approved form apply to the Board for that registration.”.

(c) the substitution for paragraph (b) in subregulation (4) of the following paragraph:

“(b) if applicable, complete financial statements for the two financial years preceding the application prepared in accordance with Generally Accepted Accounting Practice (GAAP) and certified by a person who is required by law to certify those financial statements, if any;

(d) the substitution for paragraph (e) in subregulation (4) of the following paragraph:

“(e) an original tax clearance certificate issued by the South African Revenue Service, or in the case of a foreign enterprise, proof that it has paid all taxes due by it to the government of its country of origin.;

(e) the substitution for paragraph (g), (h) and (i) in subregulation (4) for the following paragraphs:

- “(g) if applicable, financial sponsorship as contemplated in subregulation (10);
- (h) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration or application for that registration;
- (i) in the case of an application relating to the Electrical Engineering – designation EB class of works a certified copy of the contractor’s electrical contractor licence issued by the Electrical Contracting Board of South Africa;”;

(f) the substitution for paragraph (m) in subregulation (4) for the following paragraph:

- “(m) (i) in a case referred to in regulation 11(4)(ii), (iii), (iv), (v) or (vii), a board resolution or member resolution of the company or close corporation concerned sanctioning the reconstruction, amalgamation or takeover;
- (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(s) referred to in section 31 of the Close Corporations Act, 1984, stating the current percentage of each member’s interest in the corporation.”.

(g) the renumbering in subregulation (4) of paragraph (m) to paragraph (n); and

(h) the insertion of the following subregulation after subregulation (9):

“(10) A financial sponsorship referred to in subregulation (1)(g) and regulation 8(1)(c) must be a collectable financial guarantee by one person to another,(the beneficiary)-

- (a) for a determined amount;
- (b) available for a period of not less than one year;
- (c) for a specified purpose;
- (d) available to the beneficiary as and when required;
- (e) irrevocable during the period of the guarantee unless with the written agreement of the beneficiary;
- (f) 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;
- (g) If applicable, in a form acceptable to any financial institution in South Africa as defined in the Financial Services Board Act, 97 of 1990;
- (h) if applicable, reflected as a note to the financial statements of the person providing the guarantee and the financial statements of the beneficiary; and
- (i) if applicable, the sponsor may be required to provide their financial statements to the cidb and the cidb may evaluate the acceptable portion of the sponsors available capital that may be used as sponsorship.”.

**Explanatory Note:**

This amendment provides for the manner in which financial statements are submitted to the Board. Contractors did not comply with requirements and financial statements could not be readily assessed. It is proposed that financial statements prepared in accordance with the Generally Accepted Accounting Practices are required, as well as being certified by the relevant professional who is in terms of commercial legislation required to do so.

The amendment also provides adaptations consequential to the amendment to the grade 1 application procedure. In addition, the amendment provides for foreign enterprises to submit proof of their taxes being paid up in their country of origin.

The regulation amendment also provides for proof of only application for registration with a professional council to suffice, as professionals claim that the registration procedure takes a long time, preventing them to register with the CIDB.

Enterprises often change form without necessarily changing its core competence. A close corporation may convert to a company, a company may be restructured or amalgamated

into another or taken over, by friendly or by hostile takeover. A company may also simply undergo a change of name. In these cases, the enterprise should be allowed to maintain the collective experience and in cases where the track record does not change as a result of the change in the form of the entity, that entity must be allowed to maintain its grading without having to re-register.

## **7 Amendment of regulation 8**

Regulation 8 of the Regulations is amended by-

(a) the substitution for paragraph (a) in subregulation (1) of the following paragraph:

“(a) if applicable, financial statements for the two financial years preceding the application prepared in accordance with Generally Accepted Accounting Practice (GAAP) and certified by a person who is required by law to certify those financial statements, if any;

(b) the substitution for paragraph (c) in subregulation (1) of the following paragraph:

“(c) if applicable, financial sponsorship as contemplated in regulation 7(10);

(c) the substitution for paragraph (e), and (f) in subregulation (1) for the following paragraphs:

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

(f) in the case of an application relating to the Electrical Engineering – designation EB class of works a certified copy of the contractor’s electrical contractor licence issued by the Electrical Contracting Board of South Africa;”.

**Explanatory Note:**

Regulation 8 regulates the renewal of registration of a contractor and is an almost verbatim repeat of regulation 7, providing for the same matters in the case of a renewal of registration.

**8 Amendment of regulation 10**

Regulation 10 of the Regulations is substituted for the following regulation:

**“10. Procedure in relation to registration of a 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 work 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, 2000 (Act No. 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) from 1 March 2008, complies with the code of conduct;

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- (b) for contractor grading designations two to nine, submits an original tax clearance certificate to the Board within three months of the expiry of the current tax clearance certificate; and
- (c) subject to regulations 8 and 36, remains in compliance with the requirements in terms of these Regulations in relation to the category in which that contractor is registered.”.

**Explanatory Note:**

This amendment empowers the Board to downgrade a contractor in the case where the assessment committee finds a grading by an assessor to be incorrect. The assessment procedure has furthermore been streamlined to enable quicker responses. The amendment also provides that the reflection of the registration of a contractor on the official website, serves as the registration certificate required by the Act.

**9 Amendment of regulation 11**

Regulation 11 of the Regulations is amended by-

- (a) the substitution for subregulation (2) of the following subregulations:

“(2) The financial capability of a contractor is determined either in accordance with method A as prescribed in subregulation (2A) or in accordance with method B as prescribed in subregulation (2B), but method B may not be applied to an application for registration in grades 1 to 4.

(2A) Method A for determining the financial capability of a contractor comprises 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 determined in relation to the financial capability designation contemplated in regulation 12(1);

(b) the contractor during the five financial years immediately preceding the application has completed at least one construction works contract of which the total contract value exceeds the amount of the financial capability referred to in regulation 12(1); 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).

(2B) Method B for determining the financial capability of a contractor comprises establishing whether the contractor has available capital, calculated in accordance with subregulation (3), equal to or exceeding the value determined in relation to the financial capability designation as contemplated in regulation 12(1)."

(b) the substitution for subregulation (3) of the following subregulation:

"(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.";

(c) the substitution for subregulation (3A) of the following subregulation:

"(3A) Notwithstanding anything to the contrary in these Regulations, if an application is made in terms of these Regulations –

(a) in the case of a company, within 6 months from the end of its financial year; and

(b) 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.";

(d) the substitution for subregulation (4) of the following subregulation:

“(4) (a) For the purpose of determining the track record 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 -

- (i) 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;
  - (ii) a change of name of a company;
  - (iii) the reconstruction of a company;
  - (iv) the amalgamation of companies;
  - (v) the takeover of a company;
  - (vi) a scheme of arrangement in terms of sections 311 to 313 of the Companies Act, 1973;
  - (vii) the conversion of a company to a close corporation in terms of section 27 of the Close Corporations Act, 1984; or
  - (viii) a change in membership or members’ interests of a close corporation.
- (b) In the case of the amalgamation of companies, the joint track record of the companies involved may be taken into account to determine the track record of a contractor;
- (c) In the case of a change in the membership or the members’ interest of a close corporation, the joint track record of all the members may be taken into account to determine the track record of the contractor concerned.”.

(e) the substitution of subregulation (5) for the following subregulation:

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

- (a) in the case of Method A as contemplated in subregulation (2A), -



- (i) the contractor employs the requisite number of qualified persons as contemplated in regulation 12(4) in the class of works as indicated in Schedule 3, for which the contractor wishes to register;
  - (ii) the contractor has satisfied requirements contemplated in regulation 12(5) or 12(8) in relation to any specific class of construction works; and
  - (iii) the contractor has during the five financial years immediately preceding the application completed at least one construction works contract in the category of construction works for in which the contractor wishes to register, of which the value exceeds the amount of that works capability designation as contemplated in regulation 12(7); or
- (b) in the case of Method B contemplated in subregulation (2B)-
- (iv) the contractor employs the requisite number of qualified persons as contemplated in regulation 12(4) in the class of works as indicated in Schedule 3, for which the contractor wishes to register; and
  - (v) the contractor has satisfied requirements contemplated in regulation 12(5) or 12(8) in relation to any specific class of construction works.”.

**Explanatory Note:**

These amendments to regulations 11 and 12 provide for the following:

1. The replacement of employable capital (i.e. net asset value multiplied by a factor based on the bank rating factor plus financial sponsorships) with available capital (i.e. net asset value as determined by sum of a contractor’s equity, retained income and shareholders’ or members’ loans derived from financial statements for the financial year preceding the application prepared in accordance with Generally Accepted Accounting Practice, plus financial sponsorship complying with stated requirements).
2. The values for available capital (where applicable) in the financial grading criteria have been revised to account for the removal of the bank rating factor, (the bank rating was removed because it had to be obtained from an external agency and

proved to provide most contractors with a rating that translated into a similar bank rating factor, indicating that the bank rating given by banks is not always a true reflection of the contractor's financial standing. Secondly, there is a strong drive on the CIDB's side to enable the contractor to calculate his or her own grading designation. The net impact of this amendment will not significantly reduce or increase the criteria.

3. Contractors will be assessed on the better of two alternative grading methods. The first method (Method A) is based on the approach that is currently being applied to existing enterprises (employable capital, turnover, highest contract completed) and the second (Method B) is based on the existing method for new enterprises (available capital).
4. A larger number of qualified persons is required is required where contractors are assessed solely on their available capital (Method B).
5. This proposed amendment removes the need to categorise new enterprises separately and simplifies the determination of the grading designation of such contractors.
6. Values for tender value range were set in 2004. Various bodies have raised the matter with the CIDB. Contractors seem to experience problems undertaking the same size of project due to inflationary increases in material an operational costs. Inflation for the construction industry have increased beyond the general inflation for the country. The Tables in regulation 11 (regulation 12 of the Regulations) reflects an increase of approximately 29% in the tender value ranges.

The CIDB Register of Contractors is amongst others, a risk management tool for clients in the public sector. As such, the Regulations require a contractor to submit a valid tax clearance certificate at the time of registration as well as 3 weeks before its expiry. Non-compliance results in automatic suspension. Currently, very few contractors comply with this requirement due to difficulty in acquiring it in time. They are then suspended because of reasons beyond their control. It is therefore proposed that regulation 10 be amended to allow a period of grace to contractors. This change will not influence the value added by the

register to clients as the expiry date of every contractor's tax clearance certificate is shown on the CIDB website and Clients can verify the fact on the website

## 10 Amendment of regulation 12

Regulation 12 of the Regulations is amended by -

(a) the-substitution for Table 1 for the following Table:

TABLE 1

| Designation | Upper limit (R) of tender value range | Method A[subregulation (2A)] |                     |                       | Method B [subregulation 2B] |
|-------------|---------------------------------------|------------------------------|---------------------|-----------------------|-----------------------------|
|             |                                       | Best Annual Turnover (R)     | Largest contract(R) | Available capital (R) | Available capital(R)        |
| 1           | 200,000                               | -                            | -                   | -                     | N/A                         |
| 2           | 650,000                               | -                            | 150,000             | -                     | N/A                         |
| 3           | 2,000,000                             | 1,000,000                    | 500,000             | 100,000               | N/A                         |
| 4           | 4,000,000                             | 2,000,000                    | 1,000,000           | 200,000               | N/A                         |
| 5           | 6,500,000                             | 3,250,000                    | 1,600,000           | 650,000               | 1,300,000                   |
| 6           | 13,000,000                            | 7,800,000                    | 3,250,000           | 1,300,000             | 2,600,000                   |
| 7           | 40,000,000                            | 24,000,000                   | 10,000,000          | 4,000,000             | 8,000,000                   |
| 8           | 130,000,000                           | 90,000,000                   | 32,500,000          | 13,000,000            | 26,000,000                  |
| 9           | No Limit                              | 270,000,000                  | 100,000,000         | 40,000,000            | 80,000,000                  |

(b) the deletion of subregulations (2) and (3);

(c) the substitution for subregulation (4) of the following subregulation:

“(4) The minimum number of qualified persons employed permanently full time or the equivalent number of persons employed on a part time basis in relation to a works capability designation are as indicated below in Table 4A for method A as contemplated in regulated 11(2A) and as indicated below in Table 4B for method B as contemplated in regulation 11(2B):

TABLE 4A

| Works Capability | Minimum Number of Full-time Qualified Persons Required for Registration in a Category of Construction Works |
|------------------|---|
|------------------|---|

| Designation | Maximum (R) Value of Contract that a Contractor is Considered Capable of Performing | General Building (GB) | Civil Engineering (CE) | Electrical Engineering (EE) | Mechanical Engineering (ME) | Specialist Works (SP) |
|-------------|---|-----------------------|------------------------|-----------------------------|-----------------------------|-----------------------|
| 1           | 200 000   | -                     | -                      | -                           | -                           | -                     |
| 2           | 650 000   | -                     | -                      | -                           | -                           | -                     |
| 3           | 2 000 000   | -                     | -                      | -                           | -                           | -                     |
| 4           | 4 000 000   | -                     | -                      | -                           | -                           | -                     |
| 5           | 6 500 000   | -                     | -                      | -                           | -                           | -                     |
| 6           | 13 000 000  | -                     | -                      | 1                           | 1                           | 1                     |
| 7           | 40 000 000  | 1                     | 1                      | 2                           | 2                           | 2                     |
| 8           | 130 000 000   | 2                     | 2                      | 3                           | 3                           | 3                     |
| 9           | No limit  | 3                     | 3                      | 4                           | 4                           | 4                     |

TABLE 4B

| Works Capability |   | Minimum Number of Full-time Qualified Persons Required for Registration in a Category of Construction Works |                        |                             |                             |                       |
|------------------|---|---|------------------------|-----------------------------|-----------------------------|-----------------------|
| Designation      | Maximum (R) Value of Contract that a Contractor is Considered Capable of Performing | General Building (GB)   | Civil Engineering (CE) | Electrical Engineering (EE) | Mechanical Engineering (ME) | Specialist Works (SP) |
| 1                | 200 000   | N/A   | N/A                    | N/A                         | N/A                         | N/A                   |
| 2                | 650 000   | N/A   | N/A                    | N/A                         | N/A                         | N/A                   |
| 3                | 2 000 000   | N/A   | N/A                    | N/A                         | N/A                         | N/A                   |
| 4                | 4 000 000   | N/A   | N/A                    | N/A                         | N/A                         | N/A                   |
| 5                | 6 500 000   | 1   | 1                      | 1                           | 1                           | 1                     |
| 6                | 13 000 000  | 2   | 2                      | 2                           | 2                           | 2                     |
| 7                | 40 000 000  | 4   | 4                      | 4                           | 4                           | 4                     |
| 8                | 130 000 000   | 6   | 6                      | 6                           | 6                           | 6                     |
| 9                | No limit  | 8   | 8                      | 8                           | 8                           | 8                     |

- (d) the substitution in subregulation (5) of the expression "Electrical Engineering Works" for the expression "Electrical Engineering Works-designation EB"; and
- (e) the deletion of subregulation (6); and
- (f) the substitution for table 5 in subregulation (7) of the following table:

| Works Capability |   | Largest Contract Executed In The Last 5 Years In The Class Of Construction Works Applied For (R) |
|------------------|---|--|
| Designation      | Maximum Value Of Contract That A Contractor Is Considered Capable Of Performing (R) |  |
| 1                | 200 000   |  |
| 2                | 650 000   | 150,000  |
| 3                | 2 000 000   | 500,000  |
| 4                | 4 000 000   | 1,000,000  |
| 5                | 6 500 000   | 1,600,000  |
| 6                | 13 000 000  | 3,250,000  |
| 7                | 40 000 000  | 10,000,000   |
| 8                | 130 000 000   | 32,500,000   |
| 9                | No limit  | 100,000,000  |

(See explanatory note under the amendment of regulation 11.)

### 11 Deletion of regulation 14

Regulation 14 of the Regulations is deleted.

#### Explanatory Note:

The amendment of regulations 11 and 12 obviates the need for a separate manner for registration of new enterprises and regulation 14 is consequently deleted.

### 12 Deletion of regulation 15

Regulation 15 of the Regulations is deleted.

#### Explanatory Note:

Regulation 13 deletes regulation 15 of the Regulations, which provided for equivalent registration of homebuilders in the special category of works relating to homebuilding. The investigation undertaken by the CIDB into the possible merger of the NHBRC register and the CIDB register of contractors indicated that the equivalent registration as provided for in regulation 15 of the Regulations, were not compatible with that of the NHBRC and were not used at all.

### 13 Amendment of regulation 17

Regulation 17 of the Regulations is amended by the substitution for table 8 of the following table:

| Contractor Grading Designation | Tender Value Range Designation | Range of Tender Values        |  |
|--------------------------------|--------------------------------|-------------------------------|--|
|                                |                                | 13.1.1.1.1.1 Greater than (R) | 13.1.1.1.1.2 Less than or equal to (R) |
| 1(class of construction works) | 1                              | 0                             | 200 000                                |
| 2(class of construction works) | 2                              | 200 000                       | 650 000                                |
| 3(class of construction works) | 3                              | 650 000                       | 2 000 000                              |
| 4(class of construction works) | 4                              | 2 000 000                     | 4 000 000                              |
| 5(class of construction works) | 5                              | 4 000 000                     | 6 500 000                              |
| 6(class of construction works) | 6                              | 6 500 000                     | 13 000 000                             |
| 7(class of construction works) | 7                              | 13 000 000                    | 40 000 000                             |
| 8(class of construction works) | 8                              | 40 000 000                    | 130 000 000                            |
| 9(class of construction works) | 9                              | 130 000 000                   | No Limit                               |

#### Explanatory Note:

Regulation 14 amends regulation 17 to reflect the inflationary increase in tender value ranges which a contractor is considered capable for.

### 14 Amendment of regulation 18

Regulation 18 of the Regulations is substituted for the following regulation:

#### "18. Registration of projects

- (1) 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 on the official CIDB website.

- (2) An employer must at least monthly in relation to the public sector and quarterly in relation to the private sector, register all projects as contemplated in

subregulation (1), for which that employer has in writing accepted a contractor's offer to perform a construction works project as contemplated in that subregulation."

**Explanatory Note:**

The proposed amendments to the Regulation reflect the current position as provided for by the transitional relaxations i.e. all projects consisting of a single contract value above a threshold must be registered on the CIDB website without any fee being paid. The option to impose a fee is retained in the Regulations, but is deferred until the CIDB is in a position to make an informed decision based on proposals for a final model for the Register of Projects and the Best Practice Assessment Scheme.

The transitional relaxation which waived the reporting upon practical completion of a construction works project and the reporting on arbitration and litigation has been withdrawn.

## **15 Amendment of regulation 19**

Regulation 19 of the Regulations is amended by –

- (a) the deletion of paragraph (a);
- (b) the insertion of the following paragraph after paragraph (b):
- “(c) 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.”.

**Explanatory Note:**

House building projects are no more exempt as projects of this nature need to be recorded for the CIDB to correctly evaluate the nature and demographics of construction works projects.

In addition, the relaxation granted in relation to maintenance of plants are being included in the Regulations.

**16 Amendment of regulation 21**

Regulation 21 of the Regulations is amended by the-

(a) substitution for subregulation (1) of the following subregulation:

“(1) An employer must in relation to a construction works project registered in terms of regulation 19, within one calendar month of the date -

(a) of issue of a practical completion certificate, or if no practical completion certificate is issued, upon acceptance of the works by the employer; or

(b) on which a contract is cancelled or terminated,

report the status on the official CIDB website and provide all the data required in the compulsory fields of that website, including, but not limited to a report on the application of regulation 25(7A).”; and

(b) the insertion in subregulation (4), after the expression “the Board” of the expression “, the Board”.

**Explanatory Note:**

This amendment requires that all projects that are registered must be reported on at the completion within one calendar month of the date of issue of a practical completion



certificate, or if no practical completion certificate is issued, upon acceptance of the works by the employer, or on which a contract is cancelled or terminated.

## 17 Amendment of regulation 25

Regulation 25 of the Regulations is amended by-

- (a) the substitution in subregulation (2) of the reference to subregulation “(1)” for a reference to subregulation “(1A)”;
- (b) the substitution in subregulation (6) of the expression “employable capital wherever it appears, for the expression “available capital; and
- (c) the insertion of the following table after subparagraph (ii):

“TABLE 9

| 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<br>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<br>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<br>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   |

**Explanatory Note:**

This amendment provides for-

1. Correcting an incorrect reference in subregulation (2);
2. Substitution the words "employable capital " for the words "available capital";
3. An example of the calculation of the contractor grading designation of a joint venture. (The relaxation with regard to the calculation of the contractor grading designation of joint ventures have been successfully applied since 2005 and it is proposed that it is now included into the Regulations. In terms of this relaxation, contractors have the choice of calculating the contractor grading designation of a joint venture in terms of the method already contained in the Regulations, or the table included in the relaxation, whichever is the most favourable to the contractor.)

**18 Amendment of regulation 26**

Regulation 26 of the Regulations is substituted for the following regulation:

**"26. Restriction or prohibition**

(1) An accounting officer and an accounting authority as defined in the Public Finance Management Act 1999(Act No. 1 of 1999) or the Local Government: Municipal Finance Management Act, 56 of 2003, may , at the outcome of arbitration or adjudication and if that arbitration or adjudication has found a contractor not to have performed 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) An accounting officer referred to in subregulation (1) who acts in terms of that subregulation, must notify the Board of such restriction or prohibition and the reason therefore using an approved form.

(3) 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
- (d) the name of the organ of state that placed the registered contractor under such restriction."

**Explanatory Note:**

The CIDB recently investigated the power to restrict a contractor in the type and size of a contract that the contractor may undertake for a public sector client, as well as the power to prohibit that contractor to do business with such a client. The Register of Contractors must in terms of regulation 26, reflect such restriction or prohibition, if an accounting officer of an organ of state restricts or prohibits a contractor *in terms of any legislation regulating public procurement*. The legislation regulating public procurement was investigated and the following was found:

1. The power to restrict prospective tenderers from doing business with the public sector constitutes an administrative action as contemplated in the Promotion of Administrative Justice Act, 3 of 2000 and must therefore be exercised in accordance with its requirements.
2. The power to restrict or prohibit a person doing business with the public sector is expressly given in the cases of the Preferential Procurement Policy Framework Act, 5 of 2000, and the Preferential Procurement Regulations, issued in terms of the PPPFA, the obsolete Tender Board Regulations, and the Prevention and Combating of Corrupt Activities Act 12 of 2004, as well as the CID Regulations.

3. The powers given in terms of the above legislation do not apply in cases of poor performance, with the possible exception (depending on the facts of a specific case) of the CID Regulations.
4. The Treasury Regulations and the Local Government: Municipal Finance Management (MFMA): Supply Chain Management Regulations refer to a database and allow the rejection of a bid in the case of the tenderer having performed poorly on a public sector contract for respectively five years prior to the bid submission in the case of a municipality and indefinitely in the case of provincial and national government.
5. The power referred to by the Treasury Regulations and the MFMA: Supply Chain Management Regulations is currently contained in contract documentation.
6. The contract documentation that are mainly used for construction procurement in the public sector do not contain the power to restrict or prohibit a person from doing business with government, leaving organs of state operating within the construction industry without clear and unambiguous power to restrict or prohibit a person in contracting with the public sector where that person did not perform or perform poorly in terms of a contract.
7. Lastly, a contractor should have the protection afforded him by the Constitution's guarantee of good governance and fair administrative procedure. It is therefore necessary that restriction or prohibition is preceded by a fair process. Arbitration or adjudication in terms of a contract has all the elements of fair procedure.

### **19 Amendment of regulation 27**

Regulation 27 of the Regulations is amended by the substitution for paragraph (c) in subregulation (4) of the following paragraph:

“(c) has been found guilty in terms of regulation 29 of the Regulations of any non-compliance with the Act, the Regulations, or the Code of Conduct.”.

### **Explanatory Note in relation to this regulation and regulations 20 and 21:**

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8 April 2008

These regulations amend regulations 27 to 29. Investigations and Inquiries are frequently necessary. Experience has shown weaknesses in the current legal procedure. These regulations have been amended to clearly describe all the possible mutations of the legal procedure, such as the possibility of a motion procedure in cases where there are no dispute on the facts, the allowance of the hearing to be conducted in the absence of the accused if he/she does not respond to a subpoena, and the referral of a case to another organ of state in the case where the accused is an official of that organ of state. In the case of a referral to another organ of state, the referral must be copied to the Auditor General, ensuring that the case is investigated. Provision is also made for cases where the accused is the accounting officer /the accounting body of an organ of state, in which case the complaint must be referred to the Auditing Committee of that organ of state. Currently, the Board has to approve the finding and sanction made by the committee who conducts a hearing. This is not in line with the principle of division of powers as laid down by the Constitution, and the regulations are amended to leave that power with the Committee. Furthermore, the regulations now provide that the Committee, on informing the accused of its finding, must inform the accused of his/her right of review and appeal in terms of the Promotion of Administrative Justice Act, 2000.

## **20 Amendment of regulation 28**

Regulation 28 of the Regulations is substituted for the following regulation:

### **“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 Act, these Regulations or 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 Act, these Regulations or 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 -

- (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; and
- (b) submit a copy of the referral to the Audit Committee of the organ of state concerned and the Auditor-General; or
- (c) 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 is of the opinion 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 (3), 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 Act; 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.

(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 Act, these Regulations or 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 Act, these Regulations or the Code of Conduct or failed to comply with the provisions of the Act, these Regulations or the Code of Conduct;
- (b) a recommendation regarding the action that the Board should take.

**21 Amendment of regulation 29**

Regulation 29 of the Regulations is substituted for the following regulation:

**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), 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, admit or deny the charges and indicate whether he or she requests the assistance of an interpreter;
- (b) attach an extract of Part V of the Regulations to the notice referred to in paragraph (a); and
- (c) appoint a committee 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 cognizance of the evidence in the respondent's absence;
  - (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;
  - (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 (18) 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;
  - (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 in its opinion 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;
- (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 the provisions contained in paragraph (b), permit any information it requires to discharge its duties in

terms of this Part, including evidence and 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; and
    - (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.
    - (iii) in respect of those relevant facts which is not in real dispute.
  - (c) The decision of the investigation 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) Notwithstanding this subregulation, the investigating committee may only permit alternative dispute resolution proceedings if it is satisfied that 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; and
    - (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;
  - (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);
  - (ii) may, in the case where he or she makes an admission in terms of paragraph (b)(i), be found guilty of the charge referred to in subregulation (1)(a)(ii);
  - (c) may, in the event of him or her being found guilty in terms of subregulation (16)(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, 1977 (Act No. 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 of in terms of paragraph (a), the investigating committee must -

- (i) inform the accused of the finding and clearly state the reasons for the finding;
- (ii) take cognizance of any aggravating or mitigating circumstances; and
- (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 the decisive vote.

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

- (a) where the charge relates to a transgression of section 18(1) of the Act-
  - (i) permitting the contractor in terms of section 18(4) of the Act to complete the construction works concerned;
  - (ii) ordering the removal of the name of a contractor from the register in accordance with section 19 of the Act;
- (b) issuing a warning to the respondent, which warning remains valid for a period not exceeding 1 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);
- (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 make a determination on the latest date that a fine may be paid by the respondent, or the period of repayment and the amount of interim payments permitted.

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

(21) (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 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.

(22) 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, 2000 (Act No. 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;
- (ii) any other information stipulated in Chapter 3 of the Regulations on Fair Administrative Procedures.

(23) Subject to subregulation (24), any finding or sanction imposed in terms of this regulation comes into effect immediately and the Board must, if applicable, within 21 days after the hearing has been concluded, update the register of contractors within 21 days to reflect the outcome of the hearing.

(24) 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 finalized 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 days after notification of the decision of that court.

(25) 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.

(26) Any contractor whose registration is endorsed as a result of the findings of the investigation 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.

(27) A contractor whose registration is downgraded by the investigating committee in terms of subregulation (19)(d) –

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



- (b) and 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.”.

## **22 Insertion of regulations 32A, 32B, 32C and 32D**

The following regulations are inserted after regulation 32:

### **“32A. Application of Electronic Communications and Transaction Act, 2002**

The provisions of sections 15, 18, 22 and 24 of the Electronic Communications Transaction Act, 2002 (Act No. 25 of 2002) apply to the proceedings of the investigating committee, in respect of admissibility, evidential weight and interpretation of data messages.

### **32B. Criminal proceedings do not bar formal inquiry**

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.

### **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, 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 this 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.

**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 last-known postal address;
- (e) by transmitting a copy of the notice or subpoena by telefax or through other electronic communication means; 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.

(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) Notwithstanding the provisions of subregulation (1) -

- (a) it is sufficient if the person required to deliver 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 service was effected in accordance with the 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 it considers necessary.”.

**Explanatory Note:**

Regulations 24 and 25 insert regulations 32A to 32E and amend regulation 34 to provide for the alignment of evidential matters with the Electronic Communications and Transactions Act, 2002, the procedure for serving subpoenas and measures to be taken in cases where a person does not react on a subpoena.

### **23 Amendment of regulation 34**

Regulation 34 of the Regulations is amended by –

- (a) The substitution for the full stop at the end of paragraph (b) in subregulation (1) of a semi-colon; and
- (b) the insertion after paragraph (b) in subregulation (1) of the following paragraph:
  - “(c) subject to the prior consent of the Minister, to a competent authority of another country.”.

## 24 Amendment of regulation 35

Regulation 35 of the Regulations is amended by the substitution for subregulation (5) of the following subregulation:

“(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 the reflection of the registration status of a contractor on the official CIDB website is deemed to be a receipt in terms of this subregulation.”.

### Explanatory Note:

Regulation 25 amends regulation 35 and provides for the reflection of payment on the register (the website) to be deemed a receipt for the payment of fees.

## 25 Deletion of Schedule 1

Schedule 1 to the Regulations is deleted.

### Explanatory Note:

In view of the amendment to regulation 10 of the Regulations, providing for the reflection of the registration status of a contractor on the CIDB website to be serve as the registration certificate, this schedule has become obsolete and is deleted.

## 26 Amendment of Schedule 2

Schedule 2 is amended by-

(a) the substitution of Table 1 for the following Table:

**Table 1**

| 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) |

(b) the substitution of Table 2 for the following Table:

**Table 2**

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

**Explanatory Note: cidb.** Tender value limits have been increased and has necessitated an increase in annual fees. Annual fees are calculated based on the maximum tender value limit of the highest contractor grading designation that a contractor is registered in. Fees currently range from 0.02 % to 0.05 % of the maximum tender value limit for grades 2 to 8, and 0.013 % for grade 9.

The tender value limits are increasing by approximately 29%. There is no annual fee for grade 1 contactors and there is no increase in annual fees for Grade 2 contractors. The increase in fees is proportionally lower than the tender value limit increases and is approximately 15% across grades 3 to 8. The annual fees for grade 9 have been brought closer to the proportions used for grades 2 to 8 and constitutes a 37.5% increase.

This is the first fee increase since the commencement of the Regulations in June 2004. This increase however compares very favourably to the increased tender value ranges in which contractors will after this amendment be able to operate.

## **27 Amendment of Schedule 3**

### **Explanatory Note:**

1. Removal of SP (Home Builder) and SA (Alarms, security and access control)
2. Splitting of the EE class into:
  - a. -EB electrical building
  - b. -EP electrical infrastructure
3. New categories are added:
4. SQ – lightening protection
5. SR – SCADA, signaling systems
6. SS – precast concrete or steel security fencing
7. ST – telephone routes to buildings

Schedule 3 to the Regulations is substituted by the following Schedule:

**SCHEDULE 3**  
**CLASSES OF CONSTRUCTION WORKS**

| Description  | Designation | Definition   | Basic works types  | Examples  |
|--|-------------|--|--|---|
| <b>Civil engineering works</b>                       | <b>CE</b>   | 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<br>The results of operations such as dredging, earthworks and geotechnical processes.<br>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. |
| <b>Electrical engineering works (Infrastructure)</b> | <b>EP</b>   | Construction works that are primarily concerned with development, extension, installation, removal, renovation, alteration or dismantling of engineering infrastructure:<br>a) relating to the generation, transmission and distribution of electricity; or<br>b) which cannot be classified as EB.  | Electrical power generation, transmission, control and distribution equipment and systems.   | Power generation<br>Street and area lighting<br>Substations and protection systems<br>Township reticulations<br>Transmission Lines  |
| <b>Electrical engineering works (buildings)</b>      | <b>EB</b>   | 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<br>Electrical reticulations within a plot of land (erf) or building stie<br>Standby plant and uninterrupted power supply<br>Verification and certification of electrical installations on premises  |
| <b>General building works</b>                        | <b>GB</b>   | Construction works that:<br>a) are primarily concerned with the development, extension, installation, renewal, renovation, alteration, or dismantling of a permanent shelter for its occupants or contents; or<br>b) cannot be categorised in terms of the definitions provided for civil engineering works, electrical engineering works, mechanical engineering works, | Buildings and ancillary works other than those categorised as being:<br>a) civil engineering works;<br>b) electrical engineering works;<br>c) mechanical engineering works; or<br>d) specialist works. | Buildings for domestic, industrial, institutional or commercial occupancies<br>Car ports<br>Fences other than classified as SS<br>Stores<br>Walls   |

| Description                         | Designation | Definition  | Basic works types  | Examples  |
|-------------------------------------|-------------|---|--|---|
|                                     |             | or specialist works.  |  |   |
| <b>Mechanical engineering works</b> | <b>ME</b>   | 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 | <p>Machine systems including those relating to the environment of building interiors.</p> <ul style="list-style-type: none"> <li>• gas transmission and distribution systems</li> <li>• pipelines</li> <li>• solid waste disposal</li> <li>• materials handling, lifting machinery, heating, ventilation and cooling, pumps,</li> <li>• continuous process systems</li> <li>• 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 apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances or other chemical processes.</li> </ul> | <p>Air-conditioning and mechanical ventilation<br/>Boiler installations and steam distribution<br/>Central heating<br/>Centralised hot water generation<br/>Cranes and hoists<br/>Dust and sawdust extraction<br/>Compressed air, gas and vacuum installations<br/>Conveyor and materials handling installations<br/>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<br/>Kitchen equipment<br/>Laundry equipment<br/>Lift installations and escalators<br/>Refrigeration and cold rooms<br/>Waste handling systems (including compactors)</p> |
| <b>Specialist works</b>             | <b>SB</b>   | A subset of construction works identified and defined by the Board that involves specialist capabilities for its execution  | The extension, installation, repair, maintenance or renewal, or removal, of asphalt  |   |
|                                     | <b>SC</b>   |   | The development, extension, installation, removal, and dismantling, as relevant, associated with building excavations, shaft sinking and lateral earth support   |   |
|                                     | <b>SD</b>   |   | The development, extension, installation, repair, renewal, removal, or alteration of corrosion protection systems (cathodic, anodic and electrolytic)  |   |
|                                     | <b>SE</b>   |   | Demolition of buildings and engineering infrastructure and blasting  |   |
|                                     | <b>SF</b>   |   | The development, extension, installation, renewal, removal, renovation, alteration or dismantling of fire prevention and protection infrastructure (drencher and sprinkler systems and fire installation)  |   |
|                                     | <b>SG</b>   |   | The development, extension, installation, renewal, removal, renovation, alteration or dismantling of glazing, curtain walls and shop fronts  |   |
|                                     | <b>SH</b>   |   | The development, extension, installation, maintenance, renewal, removal, alteration or dismantling, as relevant, of landscaping, irrigation and horticultural works  |   |



| Description | Designation | Definition | Basic works types | Examples  |
|-------------|-------------|------------|-------------------|---|
|             | SI          |            |                   | The development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration or, dismantling of lifts, escalators, travellers 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   |
|             | 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, repair, maintenance, renewal, removal, or alteration, of lightening protection systems  |
|             | SR          |            |                   | The development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration or , dismantling of supervisory control and data acquisition systems (Scada), signalling systems and traffic control signals  |
|             | SS          |            |                   | The development, extension, installation, repair, removal, alteration, dismantling or demolition of precast concrete or steel security fencing  |
|             | ST          |            |                   | The extension, installation, maintenance, renewal, removal, renovation or alteration, as relevant, of telephone routes to buildings including the laying of cables, planting of poles, planting of stays, erection of cross-arms, fitting of insulators and wiring of the telephone routes and associated infrastructure at the exchange. |

**28 Short title and commencement**

These regulations are the Construction Industry Development Second Amendment Regulations, 2007 and commence on the date of publication.