
BOARD NOTICES

BOARD NOTICE 66 OF 2005

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000 (ACT 38 OF 2000)

TRANSITIONAL MEASURES

This notice:

- Sets out the transitional relaxation criteria for contractor registration applicable until 15 November 2007
- includes an explanatory memorandum that summarises and provides clarity on the amendments to the regulations read in conjunction with the transitional relaxation criteria set out in this Board Notice

The relaxations contained in the Schedule 1 are published in terms of regulation 38(4) of the Construction Industry Development Regulations (the Regulations) issued under section 33 of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) (the Act).

These interim relaxations are required for the fair and equitable implementation of the regulations in the transitional period within which the industry moves from an uncertain tendering market into the more enabling environment provided by the Register of Contractors, an environment that supports risk management, effective delivery, contractor development and sustainable empowerment.

The interim relaxations therefore fall away after 15 November 2007.

.....
PEPI SILINGA
CHAIRPERSON: CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

Schedule 1

Relaxation of requirements in relation to the contractor grading designation of a contractor

1 Introduction

A contractor grading designation, determined in accordance with the provisions of the Construction Industry Development Regulations, is based on satisfying the objectives and qualitative requirements contained in Table 1.

Table 1: Criteria used to formulate the approach to the determination of contractor grading designation provided for in the Regulations

| | |
|---------------------------------|--|
| Objective | To provide an indication of a contractor's capability to perform a specific contract, within a specified value range and class of works, in order to: <ul style="list-style-type: none"> i) support risk management in the tendering process; ii) reduce the administrative burden associated with the award of contracts; iii) reduce tendering costs to both clients and contractors; and iv) enable sustainable access by the emerging sector to work and development opportunity. |
| Qualitative requirement | <p>Financial capability The contractor has at the time of registration in the absence of any supply side interventions, with respect to a single contract within a specified tender value range, sufficient working capital to commence the works and render due performance until the first 'interim' payment is received as well as to fund the deficit that commonly persists for much of the early stages of a contract.</p> <p>Works capability The contractor has at the time of registration in the absence of any supply side interventions, with respect to a single contract within a specified tender value range, adequate skills and knowledge at his disposal, the applicable licenses and the necessary experience to complete a contract in a particular class of works.</p> |
| Quantitative requirement | <p>Financial capability The contractor is able to demonstrate : <ul style="list-style-type: none"> a) that he is able to muster working capital not less than the value provided for employable capital in the Regulations of the median tender value range; or b) from recent past history a capability to successfully muster finance for a contract having a value of not less than the median tender value range and a construction period not exceeding one year. </p> <p>Works capability The contractor: <ul style="list-style-type: none"> a) has in his employ sufficient professionally registered persons where the contract value exceeds R 5,0 million. b) is in possession of the relevant statutory licenses; and c) is able to demonstrate from a recent past history a capability to successfully complete a construction works contract having a value provided for in Table 1 of the regulations. </p> |

The Regulations establish quantitative parameters and criteria for the assessment of contractors in terms of Table 1 and provide a means for determining whether or not a particular contractor is eligible to be registered in a particular contractor grading designation.

Relaxations 1 to 5 in this Schedule present an **alternative** means to establishing eligibility for registration in a particular contractor grading designation during the transitional period.

Relaxations 6 and 7 in this Schedule reduce the values of parameters in the Regulations during the transitional period..

2 Transitional relaxation In respect of the manner In which a contractor's contractor grading designation is determined

In determining the contractor grading designation, the following transitional relaxation measures are being applied in relation to certain requirements of the Regulations:

Relaxation 1: In relation to full-time equivalent qualified persons: Contractor employs full-time equivalent qualified persons, who have made application to the relevant built environment council for professional registration but are not registered at the time of application for registration.

Area of non-conformance Minimum number of full-time equivalent qualified persons required for registration in a category of construction works.

Approach The number of full-time equivalent persons who have made application for registration to the relevant built environment council may be used in the assessment subject to contractors being required to submit **proof of** registration for such persons on **or** before the anniversary date of registration together with their confirmation of particulars required in terms of Regulation **36(2)**.

Information required Proof of submission and payment for **an** application for assessment by the relevant built environment council.

Data captured in Register The contractor will be credited with the number of full-time equivalent qualified persons as if they were registered.

Relaxation2: Enabling transfer of track record from one entity to another where there is no substantial change in the substance of the entity and the change affects the track-record of the **entity** as contemplated in regulation 11.

Area of non-conformance All or most of the following requirements:
a) financial capability requirements (see Tables 1 of the Regulations).:
i) Minimum annual average turnover
ii) Highest value of contract completed
iii) Employable capital;
highest value of contract completed in the class of works applied **for** (see Table 5 of the Regulations).

Approach The records of one entity may be transferred to that of another entity and

| | |
|----------------------------------|---|
| | <p>treated as if it were the same entity for the purposes of assessment where:</p> <ul style="list-style-type: none"> i) a sole proprietor becomes a close corporation of a Pty(Ltd); ii) a close corporation becomes a Pty(Ltd), or vice versa, without any substantial changes; or iii) a company registered in terms of an Act undergoes only a name change for whatever reasons without changing its principals. <p>Companies that make changes of substance must be treated as new entities or in terms of Requirement 3.</p> |
| Information required | Particulars of changes certified by an auditor . |
| Data captured in Register | Actual parameters, based on the combined records. |
| Relaxation 3: | <p>In relation to required financial or works information:</p> <p>A contractor has operated in previous years but, for whatever reasons has not been trading over the last few years and is not able to provide the required financial or works information as required in terms of regulation 11(2).</p> |
| Area of non-conformance | <p>All or most of the following requirements:</p> <ul style="list-style-type: none"> a) financial capability requirements (see Tables 1 of the Regulations): <ul style="list-style-type: none"> i) Minimum annual average turnover ii) Highest value of contract completed iii) Employable capital; b) highest value of contract completed in the class of works applied for (see Table 5 of the Regulations). |
| Approach | <p>The contractor may be assessed in accordance with the requirements of Tables 1 and 5 of the regulations, as relevant, based on the following:</p> <ul style="list-style-type: none"> a) a letter from a bank or other financial institution undertaking to provide bridging capital up to 30% of the value of the median tender value range over the next calendar year in the event that the contractor is awarded a tender in a particular tender value range or lower; b) a favourable review by the CIDB of the contractor's past work record and the curriculum vitae of its principals; and c) the necessary electrical contractor license [sub-regulation 12 (6)] and registration as a home builder [sub-regulation 12(7)], as necessary. |
| Information required | <ul style="list-style-type: none"> 1 Letter of undertaking from a bank or financial institution. 2 Company profile and list of previously completed contracts together with referee contact details 3 Curriculum vitae of principals, certified as correct by each principal. 4 Certified copies of license/ registration certificates [sub-regulation 7(4)(i) and (j)] |
| Data captured In Register | The contractor will be credited with having attained the minimum parameters associated with each of the criteria contained in Tables 1 and 5 of the Regulations. |
| Relaxation 4: | <p>To enable acceptance of best annual turnover: Contractor, other than a newly constituted enterprise, has a significantly higher turnover for one of the two financial years with a result that the average turnover compromises the contractor grading designation [regulation 11(2)(a)].</p> |
| Area of non-conformance | Minimum annual average turnover over two financial years in respect of financial capability (see Table 1 of the Regulations). |

| | |
|---------------------------|---|
| Approach | The turnover over the most favourable financial year may be used in the assessment of turnover provided that the contractor satisfies all other criteria relating to financial capability. |
| Information required | A statement of the applicant's turnover over the last financial year immediately preceding the application certified by an auditor or supporting evidence of such turnover as set out in the SARS Form VAT 201 (Return for admittance of value added tax) [sub-regulation 7(4)(c)] |
| Data captured in Register | The contractor will be credited with having attained a turnover equal to that contained in Table 1 of the Regulations. |
| Relaxation 5: | To enable bank rating where a contractor operates a savings account and can therefore not obtain a bank rating [Regulation 11(3)(b)]. |
| Area of non-conformance | Total employable capital (regulation 11(3)) |
| Approach | The CIDB reviews minimum monthly bank balances over a period of one year and makes a determination as to the bank rating factor, taking cognizance of the average bank balances and the value on which the bank rating must be based (see Table 2 of the Regulations) so that an equitable employable capital can be determined |
| Information required | Monthly bank balances over the previous 12 months certified by the bank. |
| Data captured in Register | The contractor will be credited with having the bank code of B, C or D, depending upon the bank rating code determined by the CIDB |
| Relaxation 6: | Relaxation in values required to determine the financial capability of a contractor |

This relaxation enables the requirements contained in Tables 1 and 6 in Government Notice No 692 of 9 June 2004 to be replaced with the following:

TABLE 1

Financial requirements in relation to contractor grading designation

| Financial Capability | | Track Record | | Minimum Current Financial Capability |
|----------------------|---|---|---|---|
| Designation | Maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range) | Minimum Average Annual Turnover Over The Last 2 Years | At Least one Contract During The Last 5 Years With a Value Greater Than | Employable Capital (EC) of at least (Nett Asset Value x Bank Rating Factor) + financial sponsorship |
| 1 | R 200 000 | R 0 | R 0 | R 0 |
| 2 | R 500 000 | R 0 | R 80 000 | R 50 000 |
| 3 | R 1 500 000 | R 750 000 | R 260 000 | R 150 000 |
| 4 | R 3 000 000 | R 1 500 000 | R 800 000 | R 300 000 |
| 5 | R 5 000 000 | R 2 500 000 | R 1 600 000 | R 500 000 |
| 6 | R 10 000 000 | R 6 000 000 | R 3 000 000 | R 1 500 000 |
| 7 | R 30 000 000 | R 18 000 000 | R 8 000 000 | R 4 500 000 |
| 8 | R 100 000 000 | R 70 000 000 | R 26 000 000 | R 18 000 000 |
| 9 | No limit | R 210 000 000 | R 80 000 000 | R 54 000 000 |

TABLE 6

Financial requirements for newly constituted enterprise

| Financial Capability | | Minimum Current Capability |
|----------------------|---|---|
| Designation | Maximum value of contract that a contractor is considered capable of performing | Employable Capital (EC) of at least (<i>Nett Asset Value x Bank Rating (r)</i>) + financial sponsorship(s) |
| 1 | R 200 000 | No requirement |
| 2 | R 500 000 | R 50 000 |
| 3 | R 1 500 000 | R 250 000 |
| 4 | R 3 000 000 | R 500 000 |
| 5 | R 5 000 000 | R 850 000 |
| 6 | R 10 000 000 | R 2 500 000 |
| 7 | R 30 000 000 | R 7 000 000 |
| 8 | R 100 000 000 | R 29 000 000 |
| 9 | No limit | R 90 000 000 |

Relaxation 7: To facilitate easy calculation of joint ventures

The joint venture calculator on the CIDB website must be used to determine the contractor grading designation of a joint venture. Notwithstanding any calculation, the following partnerships amongst registered contractors are deemed to satisfy the contractor grading requirements for a joint venture in the following designations:

| 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 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 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 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 Memorandum on the Recent Amendments to the Construction Industry Development Regulations and the Transitional Relaxation of Contractor Registration Requirements

This memorandum provides background and clarity on:

- Amendments to the regulations affecting the Register of Contractors, the Register of Projects and the phased implementation of the regulations;
- Transitional relaxation in registration requirements to allow for the changeover from an uncertain tendering environment to a regulatory framework that supports effective client delivery and risk management, contractor development and sustainable empowerment.

1. CONTEXT

The development and current roll-out of the national Register of Contractors and Register of Projects takes place within the framework of Government policy established in the White Paper *"Creating an enabling environment for reconstruction, growth and development in the construction industry"* (March 1999) and in the Construction Industry Development Board Act (Act 38 of 2000). The phasing in of the Registers will be substantially complete by the end of 2005, with municipal implementation phased in during 2006.

1.1 Register of Projects

The Act mandates the CIDB *".... to establish a register that gathers information on the nature, value and distribution of projects and provides the basis for a best practice project assessment scheme to promote the performance of public and private sector clients in the development of the construction industry"*.

1.2 Register of Contractors

The Act calls upon the CIDB to establish *"....a national register of contractors...., which provides for categories of contractors in a manner which facilitates public sector procurement will support risk management in the tendering process, reduce the administrative burden associated with the award of contracts, reduce tendering costs to both clients and contractors, enable effective access by the emerging sector to work and development opportunity..."*

In terms of the Act and regulations public clients may only appoint contractors who are registered with the CIDB. The Register:

- Categorises contractors in terms of particular classes of work (General Building, Civil, Electrical and Mechanical Engineering and various subcategories of Specialist Works) and grades contractors in terms of their works and financial capability from Grade 1, (contracts up to the quotation threshold established by National Treasury for public sector procurement) to Grade 9 (contracts with no limit).
- Establishes a contractor's track record, developing the confidence of public and private sector clients, financial and credit institutions.
- Accommodates Home Builders registered through the National Home Builders Registration Council, exempting them from registration in the SP class of work for the building of homes as contemplated in the Housing Consumer Protection Measures Act (Act No 95 of 1998)

- Provides for the grading designation of “potentially emerging” (PE) contractors, which enables award of tenders to historically disadvantaged contractors from one grade lower provided this is supported by a development programme that manages risk and promotes growth of the contractors targeted.
- **Includes** a system of annual fees, which is based on a sliding scale, with nominal annual fees for entry levels grades 1 and 2 (R200 and **R250** respectively). This revenue is intended to offset Government’s cost in maintenance of the Register.

The Register of Contractors reflects current industry capacity and empowerment progress. Initial experience demonstrates the potential of the Register to drive the inclusive development goals for effective delivery, performance, and sustainable enterprises that are key to stable employment, skills formation and empowerment.

1.3 Changes to the Regulations

Implementation of the Registers is a major change process affecting public sector delivery agencies, the industry and private sector clients. Public sector use of the Register of Contractors as a delivery and development instrument is crucial and requires ongoing capacity building.

Like all change processes, implementation is associated with challenges, learning and the potential for unintended consequences, particularly in the transition phase. This requires that its introduction and implementation is continuously monitored and managed to accommodate the **conditions** of transition in a manner that does not undermine the principle purpose of the Registers. This is given effect through the Amendment to the Regulations by the Minister of Public Works and through the CIDB Board Notice on transitional relaxation to the registration criteria.

2 EXPLANATION OF AMENDMENTS TO THE REGULATIONS

The amended regulations cover the following:

- Reference to the regulations governing the Municipal Finance Management Act
- Phased implementation and commencement dates for the Registers
- Register of Projects
- Register of Contractors

2.1 Reference to the Municipal Management Finance Management Act Regulations (Regulation 24(b))

The regulations now reference the Supply Chain Management Regulations issued in terms of the Municipal Finance Management Act of 2003.

2.2 Phased Implementation of the Register of Contractors and Register of Projects

The phased commencement dates for the registers are extended to:

- a) afford clients sufficient time to make the necessary adjustment and procedural changes to their procurement processes and procurement documents; and
- b) align the implementation of the registers with the rollout of the supply chain management regulations applicable to municipalities..

The implementation dates have been amended as follows:

| Client | Previous implementation date | Revised implementation date |
|--|--|------------------------------------|
| The Limpopo Provincial Department of Public Works. | 15 October 2004 | 15 October 2004 |
| The eThekweni Metropolitan Council. | 14 January 2004 | 14 January 2004 |
| The National Department of Public Works (all regions) and every provincial department responsible for public works, roads or transport or any combination thereof. | 16 May 2005 (National Department of Public Works and Gauteng Department of Transport, Roads and Public Works.) 15 August (all other provincial departments) | 30 August 2005 |
| Every provincial department | 15 August 2005 | 30 August 2005; |
| Every national department not mentioned above. | 15 August 2005 | 30 September 2005 |
| Every public entity on 30 November, 2005; every metropolitan council not mentioned above. | 15 August 2005 | 15 March 2006; |
| A municipality, which is not a metropolitan council, classified as a high capacity local authority in Government Notice No. 733 of 1 July 2004 "Local Government: Municipal Finance Management Act 2003 Delays and Exemptions". | 14 November 2005 | 30 April 2006 |
| A municipality classified as a medium capacity local authority in Government Notice No. 733 of 1 July 2004 Local Government: Municipal Finance Management Act 2003 Delays and Exemptions". | 14 November 2005 | 30 July 2006 |
| a municipality classified as a low capacity local authority in Government Notice No. 733 of 1 July 2004 "Local Government: Municipal Finance Management Act 2003 Delays and Exemptions". | 14 November 2005 | 30 November 2006, |

Private sector clients are required to implement the Register of Projects on 30 August 2005 (Previously on 16 May 2005)

2.3 Register of Projects

a. Alternative reporting arrangements during the transitional stage (Sub-regulation 38(5) and)

The amended regulations give effect to the on line, fully electronic registration of projects through "*i-Tender – Register of Projects*" which allows for

- on-line advertising of tenders (mandatory for public sector clients)
- reporting on the award of contracts and cancellation of contracts (mandatory for public and private sector clients)

The amended regulations apply until the **15th November 2007** and the electronic system is mandatory and attracts no fee.

When clients register tender adverts on the website, the system automatically notifies registered contractors of relevant work opportunities through e-mail, sms and on the cidb website.

When clients register the award of contract, and any subsequent cancellation of contract, the system automatically provides feedback on the track record of the registered contractor who has been awarded the tender.

The **"i-Tender - Register of Projects"** enables public sector compliance with Treasury regulations and the Standard for Uniformity in Construction Procurement and provides transparency in the tendering process and information on the value, nature and distribution of projects.

The system enables **batching of** tender adverts and reporting. Public sector clients who make use of the on-line system must submit batched reporting data at least monthly. Private sector clients must submit batched reporting data at least quarterly.

b. Commencement Dates (i-Tender - Register of Projects)

The commencement date for the register of projects is also extended in alignment with the implementation dates for the Register of Contractors (see above schedule):

- Public sector clients – phased as per the above schedule
- Private sector clients from 30 August 2005 as per the above schedule

c. Project value applicable to the register of projects

The minimum value of contracts that need to be registered in respect of the public sector reduces from **R300 000** to **R200 000** including VAT, i.e. the limit for quotations provided for in the supply chain management regulations issued in terms of the Public Finance Management Act of 1999 and the Municipal Finance Management Act of 2003.

The value in respect of the private sector will remain fixed at **R 3,0 million** including VAT. In relation to the private sector, the requirement for this value to reduce to **R300 000** in time, has now been removed.

2.4 Register of Contractors

a) Exemption of labour-only contractors (Regulation 3)

Contractors who undertake construction works contracts on a substantially labour-only basis are exempt from registration. Accordingly contractors who are provided with the bulk of construction material by the client or third parties in terms of specific development programmes need not be registered.

b) Limits of tender value range associated with contractor grading designations

National Treasury has raised the public sector threshold for inviting quotations (as opposed to tenders) from R100 000 to R200 000. This allows for adjustments to the maximum contract value a contractor may perform in grading designations 1 and for corresponding changes to grading designations 2 and 3 as follows:

| | | | |
|---|------------|----|------------|
| Contractor grading designation 1 - from | R100 000 | to | R200 000 |
| Contractor grading designation 2 - from | R300 000 | to | R500 000 |
| Contractor grading designation 3 - from | R1 000 000 | to | R1 500 000 |

The effect of these changes is to open up greater work opportunity for contractors registered in these grading designations without unduly compromising the risk to clients. This change also provides better opportunity for clients to target those in contractor grading designation 1 for development.

The revised grading designations are therefore as follows

| Designation | Maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range) |
|-------------|---|
| 1 | R 200 000 |
| 2 | R 500 000 |
| 3 | R 1 500 000 |
| 4 | R 3 000 000 |
| 5 | R 5 000 000 |
| 6 | R 10 000 000 |
| 7 | R 30 000 000 |
| 8 | R 100 000 000 |
| 9 | No limit |

The assessment criteria, however, have remained unchanged. The impact of these increases is as follows:

| <u>designation</u> | <u>increase in upper limit of tendering capability</u> |
|--------------------|--|
| 1 | 100% |
| 2 | 67% |
| 3 | 50% |

c) Contractor Grading designation 1 with option to provide track record

To support client ability to target work opportunity to entry level contractors, the amended regulation enables contractors in grading designation 1 to register a track record if applicable. Accordingly Contractors who in the proceeding five years have completed a contract having a value of R10 000, including VAT, or more, will have the letters "TR" recorded after their contractor grading designation on their registration certificates.

d) Track record - period over which the largest value of contact completed counts towards a contractor's capability (Sub-regulations 10(2)(b) and 10(5)(c))

The criterion for a two-year track record has proved to be an inadequate time frame. Because of the uncertain tendering environment many contractors have not won substantive contracts during the past two years and have therefore been unable to meet the criteria for works capability.

The amended regulations extend this period and contractors may now provide track record over a period of five years.

e) Amendment to the manner in which Joint Ventures are calculated (Sub-regulation 25(6)(b))

The contractor grading designation for a joint venture is determined by means of a calculator located on the CIDB's website, based on:

- a) the sum of the annual turnover of all the members to the joint venture;
- b) the sum of the employable capital of all the members to the joint venture; and
- c) the total number of equivalent full-time qualified persons in the construction works category in which the joint venture wishes to be registered.

Contractors who are new entrants do not have annual average turnovers. Contractors who are not new entrants and who are registered in contractor grading designation 2 do not necessarily have employable capital and are not required to have an annual average turnover, while contractors in contractor grading designations 3 and 4 are required to have only employable capital or annual average turnover.

In order for these contractors to be able to enter into joint venture with contractors in an equitable manner, it is necessary that they have values for these missing parameters. The amendment provides equitable values in terms of a mathematical formula for the "missing" parameters to enable them to do so. These provisions will be built into the CIDB joint venture calculator to enable the capability of joint ventures which involve partners with "missing parameters" to be assessed.

3. EXPLANATION OF CIDB GENERAL NOTICE ON TRANSITIONAL RELAXATION CRITERIA

The General Notice published by the CIDB sets out the transitional relaxation criteria for contractor registration applicable until 15 November 2007

In terms of the Regulation Amendments, the CIDB is mandated until 15 November 2007 to apply a number of relaxation measures in relation to the criteria for contractor registration. These take account of existing market distortions in the transition to a regulatory framework that supports risk management, contractor development and sustainable empowerment. It is envisaged that these distortions will be corrected during the transition period and under the impact of the new regulatory framework. Therefore the relaxation criteria set out in the Board Notice are summarised below and relate to requirements for works and financial capability.

3.1 Relaxation 1 - in relation to employed registered professionals

At grading designation 6 and above, most contractors do have qualified staff from the built environment professions. Some of these are not yet registered with the relevant built environment councils and the relaxation allows the contractor time to ensure that these qualified persons complete the process of registering with the relevant councils.

The relaxation enables a contractor to register provisionally in grading designation 6 and above provided that the required qualified staff members have applied to the relevant built environment council for registration. The contractor is required to provide proof of such registration on or before the first annual update with the CIDB.

The cidb Register requires registration in terms of any of the professional categories registered by the councils as shown below:

| Works Capability | | Minimum Number of Full-time equivalent Qualified Persons Required for Registration in a Category of Construction Works | | | | |
|--|---|---|-----------------------|---|-----------------------------|-----------------------------|
| Designation | Maximum Value Of Contract That A Contractor Is Considered Capable Of Performing | Specialist Works (SP) | General Building (GB) | Civil Engineering (CE) | Electrical Engineering (EE) | Mechanical Engineering (ME) |
| Council with which person is professionally registered | | SA Council for the Architectural Profession; SA Council for the Project and Construction Management Professions, Engineering Council of SA, SA Council for the Landscape Architectural Profession and SA Council for the Quantity Surveying Profession. | | SA Council for the Project and Construction Management Professions and Engineering Council of SA. | | |
| 1 to 5 | | No requirements | | | | |
| 6 | R 10 000 000 | 1 | - | - | 1 | 1 |
| 7 | R 30 000 000 | 2 | 1 | 1 | 2 | 2 |
| 8 | R 100 000 000 | 3 | 2 | 2 | 3 | 3 |
| 9 | No limit | 4 | 3 | 3 | 4 | 4 |

3.2 Relaxation 2 - enabling transfer of track record from one entity to another where there is no substantial change in the substance of the entity

For various reasons, some contractors have effected a name change, or have changed the form of the company:

- from a sole proprietor to a close corporation
- from a close corporation to a Pty (Ltd) or vice versa

In such cases the relaxation enables the transfer of track record from one company to another where there is only a change in name and no change in the substance of the company e.g. a change in principals, assets or resources.

Companies that make changes of substance must be treated as new entities or in terms of relaxation 3

3.3 Relaxation 3 – In relation to required financial or works information:

Required financial or works information cannot be provided by a contractor who has operated in previous years but, for whatever reasons has not been trading over the last few years.

Experience shows that there are contractors who are not able to provide the required financial or works information. In such cases the applicant may submit documentation to the CIDB for assessment. The requirements are set out clearly in the Board Notice and include a letter from a bank, company profile and referees as well as any necessary licences.

3.4 Relaxation 4 – to enable acceptance of the best annual turnover. The contractor has a significantly higher turnover for one of the two financial years with a result that the average turnover compromises the contractor grading designation.

In such cases the higher value of turnover over the last two financial years may be used in the assessment provided that the contractor satisfies all other criteria relating to financial capability.

3.5 Relaxation 5 – to enable calculation of bank rating where a contractor operates a savings account and the bank rating cannot be obtained.

In such cases, in order not to prejudice the criteria for employable capital, the contractor may submit monthly bank balances over the previous 12 months certified by the bank. On the basis of this information the contractor will be credited with a bank code of B, C or D depending on the assessment of the CIDB.

3.6 Relaxation 6 – in values ‘required to determine a contractor’s financial capability In respect to Annual Turnover and Employable Capital

The transitional relaxation of the annual turnover and employable capital requirements is of major significance to the risk management objective of the Register of Contractors and requires appropriate clarification, including clarification on the background to the requirements

a) Background and existing criteria

The **Class** of Works (General Building, Civil Engineering, Electrical Engineering, Mechanical Engineering and Specialist Works) establishes the nature of **work** a contractor is capable of performing.

Grading designations establish the maximum contract value a contractor is capable of performing in terms of financial and works capability.

| Designation | Revised maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range) | Mean value for tender value range |
|-------------|---|-----------------------------------|
| 1 | R 200 000 | R 100 000 |
| 2 | R 500 000 | R 350 000 |
| 3 | R 1 500 000 | R 1 000 000 |
| 4 | R 3 000 000 | R 2 250 000 |
| 5 | R 5 000 000 | R 4 000 000 |
| 6 | R 10 000 000 | R 7 500 000 |
| 7 | R 30 000 000 | R 20 000 000 |
| 8 | R 100 000 000 | R 65 000 000 |
| 9 | No limit | - |

Within each grading designation the principle used in the current criteria contained in the Regulations is that a contract is not awarded to a contractor who:

- does not have an annual average turnover greater than 120% of the mean value for a tender range;
- has not performed a contract having a value of at least 40% of the mean value; and
- has employable capital **less than 30%** of the mean value of the contract.

In practice this means that a client can be confident that a contractor has the capability to fund and complete a project in terms of:

- past performance measured in terms of turnover – the contractor can fund contracts having a combined value of 20% larger than the mean (average) value within the grading designation;
- past performance in funding a single contract at 40% of the mean (average) value within the grading designation.
- potential to fund the project by virtue of the actual employable capital available **and** the contractor’s relationship with the bank;

The increasing of the tender value range in contractor grading designations 1, 2 and 3 has had the effect of reducing the requirements for employable capital and annual average turnover in grading designations 1 to 4 as follows:.

| Designation | Requirements | Newly constituted enterprises |
|-------------|---|---------------------------------|
| 1 | No requirements | No requirement |
| 2 | Highest contract completed – 23% of MPV or Employable capital – 17% of MPV | Employable capital – 17% of MPV |
| 3 | Highest contract completed – 26% of MPV and Employable capital – 33% of MPV or Average annual turnover – 78% of MPV | Employable capital – 33% of MPV |
| 4 | Highest contract completed – 36% of MPV and Employable capital – 37% of MPV or Average annual turnover – 107% of MPV | Employable capital – 50% of MPV |
| 5 and above | Highest contract completed – 40% of MPV and Average annual turnover – 120% of MPV and Employable capital – 30% of MPV | |

b) Problem Statement - Market distortions and the grading criteria:

Current procurement practice, including affirmative procurement, has promoted a continuous inflow of new entrants with empowerment success measured in numbers rather than delivery, growth, turnover, profit margins, and other sustainability criteria. This has led to market distortions that require a structured relaxation of the grading criteria.

For example, in promoting historically disadvantaged contractors many public sector clients have entered into cession agreements. In terms of such agreements, payment is made directly to materials suppliers, who otherwise would not provide credit to a continuous inflow of new entrants.

These direct payments to materials suppliers do not reflect as turnover in the contractor's financial statements, resulting in a reduced grading for financial capability. This together with the waiving of performance guarantees on routine work of low value and low complexity highlights the need to moderate the requirements for turnover and employable capital in the transition period.

c) Approach to relaxation of the requirements

In assessing the potential to reduce these requirements, the CIDB is mindful of its responsibility to ensure that the purpose of the Register as a macro-risk management tool is not compromised. ~~In this context it is clear that client (and contractor) risk increases with value and complexity of the construction product.~~ Therefore the requirements have been reduced as follows:

a) Employable capital from approximately 20% of upper limit of tender value range to approximately:

- 10% for grade 1 to 5
- 15% for grades 6 and 7
- 18% for grades 8 and 9.

b) Annual Average Turnover from approximately 80% of upper limit of tender value range to approximately:

- 50% for grades 3 to 5 (no turnover requirement at grades 1 and 2)
- 60% for grades 6 and 7
- 70% for grades 8 and 9

For newly constituted enterprises the relaxation of the above requirements is based on the same principles.

This transitional relaxation is in keeping with the provision of the CIDB Act, namely to take *"...into account the different stages of development of contractors in the construction industry, the development of the emerging sector and the objectives of this Act"*.

d) Advice on complex or specialised works

This transitional relaxation is based on the implementation of routine work. For complex or specialised work, clients will need to assess specifically the capability of contractors based on track record applicable to the type of work proposed.

e) Transitional requirements

During the transitional timeframe (till 15 November 2007) the requirements are *set out* in tables 1 and 6 below. These tables replace Tables 1 and 6 in Government Notice No 692 of 09 June.

TABLE 1

Financial requirements in relation to contractor grading designation

| Financial Capability | | Track Record | | Minimum Current Financial Capability |
|----------------------|---|---|---|---|
| Designation | Maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range) | Minimum Average Annual Turnover Over The Last 2 Years | At Least one Contract During The Last 5 Years With a Value Greater Than | Employable Capital (EC) of at least (Nett Asset Value x Bank Rating Factor) + financial sponsorship |
| 1 | R 200 000 | R 0 | R 0 | R 0 |
| 2 | R 500 000 | R 0 | R 80 000 | R 50 000 |
| 3 | R 1 500 000 | R 750 000 | R 260 000 | R 150 000 |
| 4 | R 3 000 000 | R 1 500 000 | R 800 000 | R 300 000 |
| 5 | R 5 000 000 | R 2 500 000 | R 1 600 000 | R 500 000 |
| 6 | R 10 000 000 | R 6 000 000 | R 3 000 000 | R 1 500 000 |
| 7 | R 30 000 000 | R 18 000 000 | R 8 000 000 | R 4 500 000 |
| 8 | R 100 000 000 | R 70 000 000 | R 26 000 000 | R 18 000 000 |
| 9 | No limit | R 210 000 000 | R 80 000 000 | R 54 000 000 |

TABLE 6

Financial requirements for newly constituted enterprise

| Financial Capability | | Minimum Current Capability |
|----------------------|---|---|
| Designation | Maximum value of contract that a contractor is considered capable of performing | Employable Capital (EC) of at least (<i>Nett Asset Value x Bank Rating (r)</i>) + financial sponsorship(s) |
| 1 | R 200 000 | No requirement |
| 2 | R 500 000 | R 50 000 |
| 3 | R 1 500 000 | R 250 000 |
| 4 | R 3 000 000 | R 500 000 |
| 5 | R 5 000 000 | R 850 000 |
| 6 | R 10 000 000 | R 2 500 000 |
| 7 | R 30 000 000 | R 7 000 000 |
| 8 | R 100 000 000 | R 29 000 000 |
| 9 | No limit | R 90 000 000 |

3.7 Relaxation 7 – in relation to joint ventures

Contractors need to go to the joint venture calculator on the **CIDB** website in order to determine the contractor grading designation of a joint venture between registered contractors. There are many permutations that are possible, depending upon the value of the parameters for each of the partners. However, in order to simplify matters and to promote joint ventures, it is necessary to publish a simple table which indicates the most commonly encountered permutations. This necessitates that some of the calculated values in respect of some of the parameters are slightly adjusted so that the combined parameters attain the requisite values for a particular contractor grading designation.

The Board Notice provides the following “deemed-to-satisfy” requirements to enable the most commonly encountered joint venture arrangements to be entered into:

| 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 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 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 registered in contractor grading designation 5 |
| 8 | Three contractors registered in contractor grading designation 7 |
| 9 | Three contractors registered in contractor grading designation 8 |

4. CONCLUSION AND CLIENT USE OF THE REGISTERS

The Construction Registers Service has been established to shape and reflect progress in the growth, capability and transformation of the South African construction industry. The industry emerges from decades of decline into a period of significant growth. There is increasing consensus that the industry will need to double its output over the next **10** years. This growth and empowerment challenge requires a **collective** focus to systematically raise the development trajectory, to improve the **success** of project delivery and contractor sustainability and to bridge the gap between the formal and informal sectors of the industry. Affirmative procurement must be supported by an increasing focus on contractor development programmes. The Register of Contractors enables clients and industry to target development and empowerment interventions at contractors operating in specific grading designations and classes of work. It provides a macro-risk management process for government delivery agencies and contractors alike, while regulating the industry around a common development agenda underpinned by best practice procurement and project procedures.