
BOARD NOTICES

NOTICE 99 OF 2005

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

AMENDMENTS TO THE STANDARD FOR UNIFORMITY IN CONSTRUCTION PROCUREMENT PUBLISHED IN TERMS OF THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000 (ACT NO. 38 OF 2000)

The Construction Industry Development Board under sections 4(f), 5(3)(c) and 5(4)(b) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000)(the Act) read with Regulation 24 of the Construction Industry Development Regulations, issued in terms of section 33 of the Act, hereby amends the **Standard for Uniformity in Construction Procurement** published in Board Notice 67 of 2005 in Government Gazette No 27831 of 22 July 2005 as set out in schedule 1.

These amendments:

- a) require that the NEC3 Standard Form of Contract be used in place of the previous editions of this form of contract;
- b) refine the standard methods for procuring professional services;
- c) establish procurement measures to promote and develop registered contractors;
- d) reference two new CIDB construction procurement best practice guidelines to facilitate compliance with requirements;
- e) provide a more flexible approach to guarantees that satisfy the needs of a wider range of clients;
- 9** improve the flow of information from tenderers to employers in the tender process through the introduction of two returnable schedules; and
- g) provide greater consistency and clarity in the terminology used.

.....
PEPI SILINGA

CHAIRPERSON: CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

Schedule 1

AMENDMENTS TO THE STANDARD FOR UNIFORMITY IN CONSTRUCTION PROCUREMENT

Table of contents

Rename Annex A as "Standard Tender Notice and Invitation to Tender"

Rename Annex G as "Alpha-numerics associated with the Contractor Grading Designations"

Add in the following Annexes:

Annex **K**: Record of Addenda to tender documents

Annex **L**: Compulsory Enterprise questionnaire

1 Scope

No amendments

2 Normative references

Replace 2.5 and 2.0 to 2.12 with the following:

2.5 General Conditions of Contract for Construction Works as published by the South African Institution of Civil Engineering.

2.9 NEC3 Engineering and Construction Short Contract as published by the Institution of Civil Engineers.

2.10 NEC3 Engineering and Construction Contract as published by the Institution of Civil Engineers.

2.11 NEC3 Professional Services Contract as published by the Institution of Civil Engineers.

2.12 NEC3 Term Services Contract as published by the institution of Civil Engineers

3 Definitions

No amendments

4 Requirements

4.1 General

No amendments.

4.2 Solicitation of tender offers

Amend Table 4 as follows:

Insert in 2nd row in second column "Procedure which identifies a short list of not less than 5 tenderers to submit tenders" after P2 Nominated.

Insert in 3rd row in second column "P3 Open or" before "P6 Proposal Procedure"

Insert at end of sentence in 6th row in second column.

"P2 Nominated Procedure which identifies a short list of not less than 3 tenderers to submit tenders".

Insert in 7th row in second column "to nominate a sole tenderer" after "P2 Nominated Procedure".

Replace in first column of 7th row "R250 000" with "R200 000".

Replace text in second column of last row with the following:

"P7 Proposal Procedure using the two stage tendering system with Method 3 ~~or~~ 4 with weighting for price equal to zero."

Add in the following note below Table 4:

"Note: CIDB Best Practice Guideline A7 (1035), The Procurement of Professional Services, provides comprehensive guidance on the procurement of professional services."

4.3 Quality (functionality)

No amendments.

4.4 Procurement documents

Rename "Part 1, Part 2, Part 3 and Part 4" in Tables 5 and 7 as "Part C1, Part C2, Part C3 and Part C4" respectively.

Rename "Part 1 and Part 2" in the tender section of Table 6 as "Part T1 and Part T2", respectively, and "Part 1, Part 2, Part 3 and Part 4" in the contract section as "Part C1, Part C2, Part C3 and Part C4", respectively.

Rename "bill of quantities" as "bills of quantities" in tables 5, 6 and 7

4.4.1 General

Add in "Tender" before "Notice" in 4.4.7.3.

Add the following new clause:

- 4.4.1.6** The Record of Addenda to Tender Documents and the Compulsory Enterprise Questionnaire contained in Annexes K and L, respectively, shall form part of the Returnable Documents in all procurement documents issued by organs of state.

Add in the following note below new clause 4.4.1.6:

Note: Annex L is intended to indicate to the employer whether further information should be obtained to establish whether a conflict of interest exists. It also provides information about the tendering entity.

4.4.2 Preferecing schedules

No amendments.

4.4.3 Tender Data

Replace last line in box under Method 3: Financial offer and quality with the following:

The score for financial offer is calculated using Formula 1 / 2** (option 1 / 2**) where W_1 is the percentage score given to financial offer and equals 100 minus W_2 .

Replace notes below the box with the following:

* Insert percentage

** Delete reference to formula and option that is not applicable

Replace the line under the first formula in box under Method 4: Financial offer, quality and preference with the following:

The score for financial offer is calculated using Formula 1 / 2* (option 2) where W_1 is the percentage score given to financial offer and equals 100 minus W_2 .

Replace first note below the box with the following:

* Insert percentage

4.4.4 Contract data

Replace 4.4.4. I (a) (iv) with the following:

NEC3 Engineering and Construction Short Contract or NEC3 Engineering and Construction Contract.

Replace 4.4.4.1(b) (ii) with the following.'

NEC3 Professional Services Contract.

Replace 4.4.4.I (c) with the following:

NEC3 Term Services Contract

Replace clause 4.4.4.3 with the following:

- 4.4.4.3** Guarantees of an insurance company or bank required in engineering and construction works contracts shall not substantially differ from the samples provided by the drafters of the forms of contract listed in **4.4.4.1 a)**. Such guarantees shall not normally exceed 10% of the contract price or, in the **case** of a variable guarantee, 12,5%.

4.4.5 Submission Data

No amendments.

4.4.6 Subcontracting arrangements

No amendments.

4.5 Applying the CIDB register of contractors to public contracts

Replace clause 4.5.1 with the following:

- 4.5.1** Contractor grading designations shall, where appropriate, be described in all procurement documents by a three digit alpha-numeric where the first character is a number representing the tender value designation shown in column 2 of Table G1 in Annex G and the next two characters are capital letters representing the designation for the class of construction works shown in column 2 of Table G2 in Annex G.

Remove Tables 8 and 9 from section 4 of the Standard and insert in Annex G as Tables G1 and G2 respectively.

Replace in 4.5.3 "Table 9" with "Table G2" in text and in note below tabulations.

Replace in the tabulation in 4.5.6 the existing text in 7) with the following:

- 1) every member of the joint venture is registered with the CIDB not later than 21 working days from the closing date for tenders;

Replace under tabulation in 4.5.6 "Table 9" with "Table G2" in note below tabulations

Replace in 4.5.7 the text in italics below a) with the following:

*Tenders should have a CIDB contractor grading designation of . . . * or higher.* potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers.*

* insert estimated contractor grading designation

** insert one contractor grading designation below estimated contractor grading designation

Replace under tabulation in 4.5.7b) "Table 9" with "Table G2" in note below tabulations

Add in the following new clause:

- 4.5.8** Employers, wherever appropriate, in support of industry development, shall in the application of the register of contractors, promote the participation and development of registered contractors by means of one or more of the following:

- a) unbundling projects into smaller contracts;
- b) implementing targeted development programmes to support potentially emerging contractors in accordance with the provisions of the Construction Industry Development Regulations;
- c) offering preferences to contractors who undertake to enter into joint ventures with or subcontract portions of the works to such contractors; and
- d) requiring a prime contractor to subcontract defined portions of the works to such contractors in accordance with the provisions of 4.4.6.

Note: CIDB Best Practice Guideline A9 (1036), Procurement Measures to Develop Registered Contractors, provides comprehensive guidance to employers and their agents as to how they may comply with the requirements of 4.5.8.

Annex A: Best practice guidelines

Replace Table A1 with the following:

Title	Edition	Synopsis
CIDB Best Practice Guideline A1: The Procurement Cycle (1001)	Second edition (September 2005)	<p>This practice guide identifies six main procurement activities that apply to all construction procurements irrespective of their categorization as supplies, services and engineering and construction works. It also identifies the generic steps (sub-activities) associated with such activities and the logical points in the process where controls should be introduced. The actions associated with these activities and sub-activities are documented as well as the inputs and outputs to each of the actions in a logical framework.</p> <p>The practice guide also presents the recommended approach to performing the various activities and sub-activities</p>
CIDB Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector (1002)	Fourth edition (September 2005)	This practice guide provides guidelines on the application of the CIDB's Standard for Uniformity in Construction. It also establishes the relationship between this standard and National Treasury's Regulatory Framework for Supply Chain Management. Guidance is also provided on the establishment of a procurement policy within an institution and the manner in which procurement may be managed and controlled.
CIDB Best Practice Guideline A3: Evaluating tender offers (1003)	Second edition (September 2005)	This practice guide provides guidance on the evaluation of tenders in accordance with the provisions of the CIDB Standard for Uniformity in Construction Procurement respect of the seven steps identified in Practice Guide A1 associated with this activity. It also contains proforma forms to evaluate tender offers and an example of a tender evaluation report.
CIDB Best Practice Guideline A4: Evaluating Quality in Tender Submissions (1004)	First edition (March 2004)	This practice guide defines quality within the procurement context and reviews the requirements for evaluating quality in the accordance with regulatory requirements and the provisions of the CIDB Standard for Uniformity in Construction Procurement for the evaluation of quality. It furthermore provides practical guidelines on the awarding of preferences for quality, pre-qualification on the basis of quality and the scoring of tender submissions in terms of quality and price or quality, price and preference.
CIDB Best Practice Guideline A5: Managing Construction	First edition (March 2004)	This practice guide outlines the main elements of the risk management process. It identifies the generic sources of construction related risks, presents a range of options for risk allocation between the employer and the contractor and discusses the question of

Title	Edition	Synopsis
Procurement Risks (1005)		insurances. It also provides guidelines for the management of risk.
CIDB Best Practice Guideline A6: Applying the Registers to Construction Procurement (1006)	Second edition (September 2005)	This practice guide outlines the processes associated with the implementation of the register of contractors and the register of projects in accordance with the provisions of the Construction Industry Development Regulations. It provides guidelines to employers and their agents to comply with the requirements of these regulations in their procurements and describes the manner in which requirements relating to contractor grading designations may be incorporated in procurement documents.
CIDB Best Practice Guideline A7: The procurement of professional services (1035)	First edition (September 2005)	This practice guide provides an overview of government's policy regarding the appointment of consultants and the provisions made in the CIDB Standard for Uniformity for the procuring of professional services. It outlines procedures in respect of each of the methods contained in this standard and guidance on the compilation of procurement documentation associated with professional service contracts. It also establishes the relationship between the methodology advocated by the standard and that promoted by National Treasury in their Supply Chain Management Practice Notes.
CIDB Best Practice Guideline A8: Procurement measures to develop registered contractors. (1036)	First edition (September 2005)	This practice guide outlines the principles for sustainable growth and a number of strategies to promote the participation of smaller registered contractors in public contracts so that they can grow and develop. The strengths and weaknesses of each of these strategies are discussed.
CIDB Best Practice Guideline B1: Formulating and Implementing Preferential Procurement Policies (1007)	First edition (March 2004)	This practice guide presents a range of policy options and implementation methodologies that may be pursued in the formulation of preferential procurement policies that are consistent with the provisions of the South African regulatory regime. The guide introduces the thinking behind preferential procurement policies, the manner in which such policies are implemented internationally and the constraints to implementation within South Africa. It interprets the Preferential Procurement Policy Framework Act and related regulations, identifies the methods by which preferences may be applied, provides guidelines as to how preferential procurement policies may be formulated to satisfy legislative requirements and contains examples of preferential procurement policies that are drafted in accordance with this practice guide.
CIDB Best Practice Guideline B2: Methods and Procedures for Implementing Preferential Procurement Policies (1008)	First edition (March 2004)	This practice guide provides a range of uniform methods and procedures for implementing a wide range of policy themes in a consistent manner. The guide presupposes that a preferential procurement policy is in place and focuses on the capturing of preferencing requirements in procurement documents. It contains sample preferencing schedules, clauses required to activate preferencing in the Tender Data where use is made of the CIDB Standard for Uniformity in Construction Procurement, and data capture forms.
CIDB Best Practice Guideline C1: Preparing Procurement Documents (1009)	Second edition (September 2005)	This practice guide identifies the various types of procurement documents and provides a uniform format for the drafting and compilation of these documents. It also establishes a practical approach to uniformity and standardization of procurement documents within an organization and makes recommendations regarding the forms of contracts which should be used. It also contains a number of uniform component documents to facilitate a uniform approach.

Title	Edition	Synopsis
CIDB Best Practice Guideline C2: Choosing an appropriate Form of Contract for Engineering and Construction Works (1010)	Second edition (September 2005)	This practice guide presents the fundamental considerations in the selection of a form of contract for engineering and construction works. It presents an overview of three different series of forms of contracts and provides practical guidance of the selection of appropriate forms of contract for an organization or for use in selected pricing and contracting strategies.
CIDB Best Practice Guideline C3: Adjudication (1011)	Second edition (September 2005)	This practice guide provides an overview of what adjudication is, presents the principles underpinning adjudication, reviews the provisions for adjudication in standard forms of contract (NEC, FIDIC and CIDB), outlines an approach for the selection and use of adjudicators, and provides sample clauses and proforma agreements to be included in procurement documents.
CIDB Best Practice Guideline D1: Subcontracting Arrangements (1012)	First edition (March 2004)	This practice guide establishes acceptable practices in respect conditions of subcontract. Features of forms of subcontract which are unacceptable to the Employer and the Contractor are identified and described. It also recommends forms of subcontract which have desirable features for use with the main contracts identified in Practice Guide C2 and reviews the legal considerations in the engagement of labour only subcontractors.
CIDB Best Practice Guideline D2: Joint Venture Arrangements (1013)	First edition (March 2004)	This practice guide identifies the reasons for forming joint ventures, reviews requirements for the formation of joint ventures in response to preferential procurement policies and presents an overview of the typical content of a joint venture agreement. It also identifies the standard joint venture agreements forms that are suitable for use or to serve as a basis for the development of an agreement.

Annex B: Standard Notice and Invitation to Tender

Replace heading with "Standard Tender Notice and Invitation to Tender"

Replace first line of text in column 1 with:

..... invites tenders for

Replace third line with the following:

Tenderers should have a CIDB contractor grading of . . . or higher. potentially emerging enterprises who satisfy criteria stated in the Tender Data may submit tender offers.

Omit where:

- i) the quotation procedure is used;
- ii) the contract involves supplies or services; or
- iii) the employer does not promote potentially emerging enterprises in engineering and construction works.

Insert best estimate of required contractor grading designation and one contractor grading designation lower before "potentially emerging".

Replace "a compulsory pre-tender meeting" with "a compulsory clarification meeting"

Insert "e-mail" after "facsimile" in third last line.

Annex C: Form of offer and acceptance

Rename "Part 1, Part 2, Part 3 and Part 4" in the Agreement section of the form as "Part C1, Part C2, Part C3 and Part C4", respectively, and "Parts 1 to 4 above" to "Parts C1 to C4 above."

Delete in second last paragraph of Acceptance portion of form "at, or just after, the date this agreement comes into effect".

Add "working" before "days" in:

- last paragraph of Acceptance portion of form
- footnote 1 (twice) of Acceptance portion of form

Annex D: Sample preferencing schedule where direct preferences are granted in respect of targeted enterprise status

Replace clause 2 in sample preferencing schedule (direct preference) "Net amount" with "contract price"

*Delete "*insert percentage value, typically between 20 and 25%" at bottom of sample preferencing schedule (direct preference) and insert value of "25%" in 2(1)*

Replace clause 3 in sample preferencing schedule (direct preference) with the following:

The sanctions for breaching the preferencing conditions are:

- 1) termination of the Contract; or
- 2) a financial penalty payable to the Employer equal to 1,25 times the number of tender evaluation points awarded in respect of the preference claimed, multiplied by the contract price exclusive of VAT, divided by 100.

Annex E: Sample preferencing schedule where preferences are granted in respect of the direct participation of targeted enterprises and / or labour

No amendment.

Annex F: Standard Conditions of Tender

Add the following subclause to F. 1.3.3:

- d) **quality (functionality)** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

Add "written" between "give" and "reasons" in last sentence of F.1.5.1.

Add "responsive" between "all" and "tenders".

Replace "complies with" in F.2.1 with "satisfies"

Delete "Site visit and" in heading for F.2.7.

Delete "site visit and" before "clarification meeting" in F.2.7.

Replace "may not" with "might not" in F.2.9

Add after "contract data" the words "and described in the scope of works" in F.2.13.1

Add the following note under Subclause F.2.17

Note: Sub-clause ~~F.2.17~~ **does** not preclude the negotiation ~~of~~ the ~~final~~ terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.

Change "shall not assume" to "will not assume" in f.2.3.18

Change "prior to" to "before" in F.3.1.

Change "date of the Tender Notice" to "date that tender documents are available" and "will then notify it to all tenderers" to "shall then notify all tenderers" in F.3.2.

Change "Announce at the opening held immediately after the opening of tender submissions" to "Announce at the meeting held immediately after the receipt of tender submissions" in F.3.4.2

Change "above than the minimum number" to "more than the minimum number" in 3.5.2

Change "meets" to "complies with" in F.3.3 a)

Change "bill of quantities" to "bills of quantities" and "applies" to "apply" in second and third bullets of F.3.9.

Number the two paragraphs in F.3.8 as F.3.8.1 and F.3.8.2 and label 3 bullets in F.3.8.2 as a), b) and c)

Number the two paragraphs in F.3.9 as F.3.9.7 and F.3.9.2. Number bullets in F.3.9.1 as a), b) and c) and replace "above" in F.3.9.2 with "in F.3.9.1"

Change "unit rate will" to "unit rate shall" in f.3.9 b)

Remove line between 1) and 2) in Method 2 in f.3.11.1

Change "categories stated in the Tender Data" with "categories in accordance with the Tender Data" in F.3.11.3

Change "satisfies" with "complies with" in f.3.13.1

Annex G: Form of Guarantee

Replace title with “Alpha- numerics associated with the Contractor Grading Designations”, delete existing contents of annex, insert Tables 8 and 9 and rename as Tables G1 and G2

Annex H: Standard Conditions for the calling for Expressions of Interest

No amendment

Annex I: Selection of subcontractors by employers and contractors

Replace Annex I with the following:

Selection of subcontractors by employers and contractors

Insert the following in the Scope of Work:

Scope of mandatory subcontract works

The following portions of the works shall be subcontracted in accordance with the subcontracting procedures described in this scope of work:

.....

Subcontracting procedures

Competitive tenders shall be invited in respect of each portion of the works that **must** be subcontracted in terms of the contract in accordance with the relevant provisions of the latest edition of the CIDB Standard for Uniformity in Construction Procurement. The Contract Data in the associated procurement documents shall be based on **the**,.....(*insert title of standard form of subcontract that is to **be used***), with minimal project specific variations and amendments that do not change their intended usage.

The Employer together with the Contractor shall evaluate the tenders received in accordance with the provisions of the Standard Conditions of Tender contained in Annex F of Standard for Uniformity in Construction Procurement.. The evaluation panel shall comprise equal representatives from the Employer **and** from the Contractor.

The Contractor shall without delay enter into contract with the successful tendering subcontractor based on their accepted tender submission

The Contractor shall remain responsible for providing the subcontracted portion of the works as if the work had not been subcontracted.

- Note:**
- 1 The CIDB Best Practice Guideline D1, Subcontracting Arrangements, provides guidance on the selection of a suitable form of subcontracts.
 - 2 Provision in the Pricing Data should be made for provisional **sums** for portions of the works that are to be subcontracted in this manner.

Annex J: Standard Notice and Invitation to submit an Expression of Interest

No amendment

Add in the following two new annexes

Annex K
(normative)

Record of Addenda to tender documents

We confirm that the following communications received from the Employer before the submission of this tender offer, amending the tender documents, have been taken into account in this tender offer:		
	Date	Title or Details
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

Attach additional pages if more space is required.

Signed

Date

Name

Position

Tenderer

'insert separate page if necessary

Section 7: Record of spouses, children and parents in the service of the state

Indicate by marking the relevant boxes with a cross, if any spouse, child or parent of a sole proprietor, partner in a partnership or director, manager, principal shareholder or stakeholder in a company or close corporation is currently or has been within the last 12 months been in the service of any of the following:

- | | |
|---|--|
| a member of any municipal council | an employee of any provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act 1 of 1999) |
| a member of any provincial legislature | |
| a member of the National Assembly or the National Council of Province | a member of an accounting authority of any national or provincial public entity |
| a member of the board of directors of any municipal entity | an employee of Parliament or a provincial legislature |
| an official of any municipality or municipal entity | |

Name of spouse, child or parent	Name of institution, public office, board or organ of state and position held	Status of service (tick appropriate column)	
		current	Within last 12 months

The undersigned, who warrants that he/she is duly authorised to do so on behalf of the enterprise:

- authorizes the Employer to obtain a tax clearance certificate from the South African Revenue Services that my / our tax matters are in order;
- confirms that neither the name of the enterprise or the name of any partner, manager, director or other person, who wholly or partly exercises, or may exercise, control over the enterprise appears on the Register of Tender Defaulters established in terms of the Prevention and Combating of Corrupt Activities Act of 2004;
- confirms that no partner, member, director or other person, who wholly or partly exercises, or may exercise control over the enterprise appears, has within the last five years been convicted of fraud or corruption;
- confirms that I/we are not associated, linked or involved with any other tendering entities submitting tender offers and have no other relationship with any of the tenderers or those responsible for compiling the scope of work that could cause or be interpreted as a conflict of interest;
- confirms that the contents of this questionnaire are within my personal knowledge and are to the best of my belief both true and correct.

Signed

Date

Name

Position

Enterprise
name