
GOVERNMENT NOTICE

DEPARTMENT OF PUBLIC WORKS

No. R. 1224

14 November 2008

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

The Minister of Public Works has in terms of section 33 of the Construction Industry Development Board Act, 38 of 2000, made the regulations set out in the schedule hereto.

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. R.692 in Gazette No. 26427 of 9 June 2004, as amended by Government Notice No. R.1333 of 12 November 2004 published in Government Gazette No. 26991 of 12 November 2004, Government Notice No. R.751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, Government Notice No. R.842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006 and Government Notice No. R.1121 of 23 November 2007, published in Government Gazette No. 30510 of 23 November 2007.

2. General amendment

The Regulations are amended by the substitution for the expression “CIDB” or “cidb” wherever they occur, for the expression “Board”.

3. Amendment of regulation 1 of Regulations

Regulation 1 of the Regulations is amended –

(a) by the insertion after the definition of “approved” of the following definition:

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

(b) by the deletion of the definition of “employable capital”;

(c) by the substitution for the definition of “financial sponsorship” of the following definition:

“financial sponsorship” means a financial sponsorship contemplated in regulation 7(10);“;

(d) by the insertion after the definition of “joint venture of the following definition”:

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

(e) by the deletion of the definition of "NHBRC".

4. Insertion of regulation 2A in Regulations

The following regulation is inserted after regulation 2:

"(2A) Wherever in these Regulations financial statements are referred to, it means financial statements prepared in accordance with Generally Accepted Accounting Practice (GAAP) or the International Financial Reporting Standard (IFRS), and certified by a person who is by law required to certify those financial statements, if any."

5. Amendment of regulation 3 of Regulations

Regulation 3 of the Regulations is amended -

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

(b) by 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;"

(c) by the insertion after paragraph (j) of the following paragraph:

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

6. Amendment of regulation 4 of Regulations

Regulation 4 of the Regulations is amended -

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

"(1) Any contractor who is registered as a homebuilder in terms of section 10 of the Housing Consumer Protection Measures Act, 95 of 1998, read with the General Regulations Regarding Housing Consumer Protection Measures, 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) by the addition of the following subregulation:

“(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.”.

7. Amendment of regulation 6 of Regulations

Regulation 6 of the Regulations is amended by the substitution for paragraph (d) of 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, 53 of 2003,”.

8. Amendment of regulation 7 of Regulations

Regulation 7 of the Regulations is amended by-

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

“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 the categories of registration that relate to contractor grading designations 2 to 9 as contemplated in regulation 12(1) (Table 1) must on the approved form apply to the Board for that registration.”;

(c) the substitution for paragraphs (b), (c), (e), (g) and (i) in subregulation (4) of the following paragraphs:

“(b) if applicable, complete financial statements of the contractor for the two financial years preceding the application;

(c) if so requested by the Board, where the financial statements of a contractor are not audited, supporting evidence of that contractor’s

turnover as set out the South African Revenue Services Form VAT 201 (return for value added tax) and proof of payment of that value added tax;

- (e) an original tax clearance certificate issued to the contractor by the South African Revenue Service, or in the case of a foreign enterprise, which has not yet performed any contracts within the Republic of South Africa, proof that it has paid all taxes due by it to the government of its country of origin;
- (g) if applicable, proof of financial sponsorship of the contractor as contemplated in subregulation (10);
- (i) in the case of an application relating to the Electrical Engineering – designation EB class of works a certified copy of the current certificate of registration issued by the Electrical Contracting Board of South Africa;”;

(c) the insertion after paragraph (l) of subregulation (4) of the following paragraph :

- “(lA) (i) in a case referred to in regulation 11(4)(ii), (iii), (iv), (v) or (vii), a board resolution of the company or member resolution of the close corporation concerned sanctioning the change of name, reconstruction, amalgamation, takeover or conversion;
- (ii) in the case of a scheme of arrangement referred to in regulation 11(4)(vi), the court order sanctioning the scheme of arrangement; or
- (iii) in the case of a change in membership or members’ interest of a close corporation as contemplated in regulation 11(4)(viii), the certificate referred to in section 31 of the Close Corporations Act, 69 of 1984, stating the current percentage of each member's interest in the corporation;”;

(d) the substitution for the expression “90” in subregulation (8) of the expression “60”;

(e) the addition of the following subregulations:

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

- (a) for a fixed amount;
- (b) is available to the beneficiary as and when required;
- (c) to support the operations of the contractor concerned to complete his or her projects;
- (d) if applicable, available to a third person, such as a bank, to advance funds or such as a supplier, to advance a line of credit;
- (e) If applicable, in a form acceptable to any financial institution in South Africa as defined in the Financial Services Board Act, 97 of 1990; and
- (f) If not provided by a financial institution, to an amount which does not exceed 15% of the sponsor's net asset value as determined from the sponsor's latest financial statements.

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

9. Substitution of regulation 8 of Regulations

Regulation 8 of the Regulations is substituted for the following regulation:

"(1) An application in terms of section 17(2) of the Act must be done on the approved form and the contractor concerned must ensure that any information required in terms of regulation 7(4) that has changed since that contractor's first application or latest confirmation of particulars, is supported by the evidence required in terms of regulation 7(4).

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

10. Substitution of regulation 10 of Regulations

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

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

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

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

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

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

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

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

- (a) complies with the code of conduct for contractors; and
- (b) subject to regulations 8 and 36, complies with the requirements in terms of these Regulations for the category in which that contractor is registered.”.

11. Amendment of regulation 11 of Regulations

Regulation 11 of the Regulations is amended -

- (a) by 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 set out in subregulation (2A) or in accordance with method B as set out in subregulation (2B), but method B may not be applied to an application for registration in grades 2 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 in the third column of Table 1 determined in relation to the financial capability designation contemplated in regulation 12(1);
- (b) the contractor during the five years immediately preceding the application has completed at least one construction works contract of which the total contract value exceeds the amount in the fourth column of Table 1 of the financial capability referred to in regulation 12(1); and
- (c) the contractor has available capital calculated in accordance with subregulation (3), equal to or exceeding a value determined in relation to the financial capability designation as contemplated in regulation 12(1).

(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) by 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, and financial sponsorship—

- (a) where the sponsor is a registered contractor or owns 50 percent or more of the applicant contractor, may constitute up to 100 percent of the total amount of required available capital;
- (b) where the sponsor is not a registered contractor and owns 25 percent or more of the applicant contractor, may not exceed 75 percent of the total amount of the required available capital; and
- (c) where the contractor is not a registered contractor and the sponsor owns less than 25 percent of the applicant contractor, may not exceed 50 percent of the total amount of the required available capital."

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

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

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

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

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

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

- (a) the first contractor being a sole proprietor, partnership or trust who establishes a company or close corporation in terms of the Companies Act, 1973 or the Close Corporations Act, 1984;
- (b) a change of name of a company;
- (c) the reconstruction of a company;
- (d) the amalgamation of companies;
- (e) the takeover of a company;
- (f) a scheme of arrangement in terms of sections 311 to 313 of the Companies Act, 1973;
- (g) the conversion of a company to a close corporation in terms of section 27 of the Close Corporations Act, 1984; and
- (h) a change in membership or members’ interests of a close corporation.”.

(e) by the substitution for subregulation (5) of 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