

works as indicated in Schedule 3, for which the contractor wishes to register;

- (ii) the contractor has satisfied the 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 years immediately preceding the application completed at least one construction works contract in the category of construction works for which the contractor wishes to register, of which the value 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)-

- (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; and
- (ii) the contractor has satisfied requirements contemplated in regulation 12(5) or 12(8) in relation to any specific class of construction works.”.

12. Amendment of regulation 12 of Regulations

Regulation 12 of the Regulations is amended -

(a) by the substitution in subregulation (1) for Table 1 of 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) (2 year)	Largest contract(R) (5 year)	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) by the deletion of subregulation (1)(a);

(c) by the deletion of subregulations (2) and (3);

(d) by 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 qualified 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 regulation 11(2A), and as indicated below in Table 4B for method B as contemplated in regulation 11(2B), respectively:

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 (EB and EP)	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 (EB and EP)	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

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

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

(f) by the deletion of subregulation (6); and

(g) by the substitution in subregulation (7) for Table 5 of the following Table:

TABLE 5

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

(h) by the substitution for subregulation (8) of the following subregulation:

“(8) A person is considered to be a qualified person for the purpose of regulation 7(4) if that person-

(a) for the classes of construction works “Civil Engineering”, “Electrical Engineering” and Mechanical Engineering” is registered as a professional in accordance with the Engineering Profession Act, 46 of 2000 or the Project and Construction Management Professions Act, 48 of 2000; and

(b) for the classes of construction works “General Building” and “Specialist Works” is registered as a professional in accordance with the-

- (i) the Project and Construction Management Professions Act, 48 of 2000;
- (ii) the Engineering Profession Act, 46 of 2000;
- (iii) the Architectural Profession Act, 44 of 2000;
- (iv) the Quantity Surveying Profession Act, 49 of 2000; or
- (v) the Landscape Architectural Profession Act, 2000 45 of 2000.

13. Deletion of regulation 14 of Regulations

Regulation 14 of the Regulations is deleted.

14. Deletion of regulation 15 of Regulations

Regulation 15 of the Regulations is deleted.

15. Substitution of regulation 16 of Regulations

Regulation 16 of the Regulations is substituted for the following regulation:

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

- (a) that contractor’s financial statements on the date of the applicable financial year-end; and
- (b) the value of construction works projects completed, on the date of the completion of the applicable project.

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

16. Amendment of regulation 17 of Regulations

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

TABLE 8

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

17. Amendment of regulation 18 of Regulations

Regulation 18 is amended by the insertion of the following subregulation before subregulation (1):

"(1A) Despite the values determined in Government Notice No. 692 of 9 June 2004, every project consisting of a single construction works contract-

- (a) for the public sector of which the value exceeds R200 000.00; or
- (b) for the private sector and a public entity listed in Schedule 2 of the Public Finance Management Act, 1 of 1999, of which the value exceeds R10 million,

must be registered in accordance with this Part."

18. Amendment of regulation 19 of Regulations

Regulation 19 of the Regulations is amended –

- (a) by the deletion of paragraph (a); and
- (b) the addition of the following paragraphs:

- “(c) for any maintenance required to maintain all plant infrastructure in operational condition and any plant modifications necessary for the optimisation of such plant associated with continuous process systems involving chemical works, metallurgical works, oil and gas wells, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances and other chemical processes; or
- (d) for installation, repair, maintenance or alteration of mechanical materials handling systems and lifting machinery in relation to movement of containers and bulk material.”.

19. Amendment of regulation 24 of Regulations

Regulation 24 of the Regulations is amended by the substitution for the expression preceding paragraph (a) of the following expression –

“Every client or employer who is inviting calls for expression of interest or soliciting competitive tenders without first calling for expressions of interest in the construction industry must publish that invitation to tender on the Board’s website and that solicitation must be in accordance with –”.

20. Amendment of regulation 25 of Regulations

Regulation 25 of the Regulations is amended -

- (a) by the substitution for subregulation (1) of the following subregulation;

“(1) Subject to subregulation (1A), in soliciting a tender offer or an expression of interest for a construction works contract, a client or employer must stipulate that only submissions of tender offers or expressions of interest by contractors who are registered in the category of registration required in terms of subregulation (3) or higher, may be evaluated in relation to that contract.”.

- (b) by the substitution in subregulation (2) of the reference to subregulation “(1)” for a reference to subregulation “(1A)”;

- (c) by the substitution of subregulation (6) for the following subregulation:

“(6) The contractor grading designation for a joint venture is determined either in accordance with table 9 or in accordance with regulation 11 but is calculated based on-

- (a) the sum of the annual turnover of all the members to the joint venture;
- (b) the sum of the available 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,

but where-

- (i) a contractor is graded solely on the basis of available capital, that contractor is deemed to have an annual average turnover equal to the values set out in columns 3 and 4 of Table 1 in regulation 12(1) in relation to his or her contractor grading designation; and
- (ii) a contractor is registered in grading designation of 3 or 4, the actual values that were used for the parameters that were assessed and notional values must be assigned to the parameters referred to in paragraphs (a) to (c) that the contractor was not assessed on, in accordance with the following formula:

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

where:

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

B = minimum value of average annual available capital / average turnover, corresponding to A, required to determine the capability of a contractor in the contractor grading designation in which the contractor is registered [see table 1 in regulation 12(1)];

C = minimum value of average annual available capital / average turnover, corresponding to A, required to determine the capability of a contractor in one contractor grading designation higher than the one in which the contractor is registered [see table 1 in regulation 12(1)];

D = minimum value of average annual available capital / average turnover / contract value, corresponding to the parameter being assessed, required to determine the

capability of a contractor in the contractor grading designation in which the contractor is registered [see table 1 in regulation 12(1)];

E = minimum value of average annual available capital / average turnover / contract value, corresponding to the parameter being assessed, required to determine the capability of a contractor in one contractor grading designation higher than the one in which the contractor is registered in [see table 1 in regulation 12(1)]".

TABLE 9

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

21. Amendment of regulation 26 of Regulations

The following regulation is substituted for regulation 26:

"26. Restriction or prohibition

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

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

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

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

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

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

- (a) the name of the registered contractor concerned;
- (b) the period of such restriction or prohibition;
- (c) the reason for such restriction; and
- (d) the name of the organ of state that was party to the agreement in terms of which the contractor concerned was found to be in default.”.

22. Amendment of regulation 27 of Regulations

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

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

23. Insertion of regulation 27A in Regulations

The following regulation is inserted after regulation 27 of the regulations:

“27A. Application of code of conduct

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

24. Substitution of regulation 28 of Regulations

The following regulation is substituted for regulation 28:

“28. Preliminary investigation of complaint or suspicion

(1) If the Board has –

- (a) received a complaint from any person who is aggrieved by an action taken in terms of the code of conduct or an omission to take such action; or
- (b) reasonable grounds to suspect that a person has acted contrary to, or has omitted to act in terms of, the code of conduct,

the Board must appoint an investigating officer to investigate that complaint or suspicion.

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

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

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

- (a) the Board has jurisdiction to investigate the complaint or suspicion; and
- (b) reasonable grounds exist for the complaint or suspicion.