

BOARD NOTICE 119 OF 2012**Construction Industry Development Board****Draft for Public Comment****Standard for Indirect Targeting for Enterprise
Development through Construction Works
Contracts****— June 2012**

In terms of sections 5(2)b of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) (the Act), the Construction Industry Development Board is empowered to establish best practice Standards. This draft best practice Standard for Indirect Targeting for Enterprises Development through Construction Works Contracts establishes a key performance indicator in the form of a contract participation goal (CPG) relating to the engagement of targeted enterprises on a contract for the provision of construction works coupled to the enterprise development.

This draft best practice Standard is issued here for public comment. Interested persons and the public are invited to submit comments on the draft best practice standard within 30 days of the date of this publication.

Interested parties are requested to forward their comments in writing for the attention of Dr Rodney Milford to one of the following:

cidb
P O Box 2107
Brooklyn Square 0075

cidb
Block N&R
SABS Campus
2 Dr Lategan Drive
Groenkloof, Pretoria

Fax: 086 687 4936

email: rodneym@cidb.org.za

Bafana Ndendwa
Chairperson: Construction Industry Development Board

Draft for Public Comment

Draft for Public Comment: Standard for Indirect Targeting for Enterprise Development through Construction Works Contracts

(25 June 2012)



Construction Industry Development Board
Pretoria
Tel: 012 343 7136 or 012 481 9030
Fax: 012 343 7153
E-mail: cidb@cidb.org.za

Draft for Public Comment

Standard for Indirect Targeting for Enterprises Development through Construction Works Contracts

Foreword	1
1 Scope	1
2 Terms and Definitions	1
3 Requirements	3
3.1 Contract Participation Goal (CPG)	3
3.2 Enterprise Development Support	4
3.3 Reports after Practical Completion	4
4 Sanctions	5
Annex A: Targeted Enterprise Declaration Affidavits	6

Draft for Public Comment

Standard for Indirect Targeting for Enterprises Development through Construction Works Contracts

Foreword

The cidb Act (Act 38 of 2000) requires that the Board must establish a *Best Practice Project Assessment Scheme* based on the best practices identified by the Board. All construction contracts above a prescribed tender value will then be subject to an assessment of compliance with best practice standards and guidelines published by the Board.

The aim of this best practice *Standard for Indirect Targeting for Enterprise Development* is to promote enterprise development by providing for a minimum contract participation goal (CPG) of 5% of the total project value on selected contracts to be undertaken by joint-venture partners or to be sub-contracted to developing contractors that are also to be beneficiaries of enterprise development support from the main contractor.

Private and public sector employees are encouraged to adopt this Standard. However, notwithstanding this, it is the cidb's intent that in terms of the cidb Act and as prescribed by the Minister of Public Works, this Standard will become a mandatory requirement on public sector contracts.

Furthermore, it is the cidb's intent to increase the minimum CPG of 5% to at least 10% over a three year period. This incremental phasing-in of the CPG will provide clients and contractors the time required to gain experience with this Standard, and to introduce the necessary changes into the nature and structure of construction contracts to accommodate a CPG of 10% or higher.

This cidb *Standard for Indirect Targeting for Enterprise Development* is aligned to the enterprise development components within the construction sector Codes of Practice for Broad Based Black Economic Empowerment.

1 Scope

This standard establishes a key performance indicator in the form of a contract participation goal (CPG) relating to the engagement of targeted enterprises on a contract for the provision of construction works coupled to the enterprise development.

This standard sets out the methods by which the key performance indicator is measured, quantified and verified in the performance of the contract.

2 Terms and Definitions

For the purposes of this document, the following definitions apply:

black people: natural person who are African, Coloured or Indian and who are a citizen of the Republic of South Africa:

- a) by birth or decent; or
- b) naturalisation occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993 or occurring after the commencement date of such Act, but who, without the Apartheid policy would have qualified for naturalisation before then.

class of construction works: the class of construction works referred to in Schedule 3 of the Construction Industry Development Regulations 2004 as amended and published in terms of the Construction Industry Development Board Act of 2000 (Act 38 of 2000).

Draft for Public Comment

Construction Industry Development Board (CIDB): the board established in terms of the Construction Industry Development Board Act of 2000 (Act 38 of 2000).

contract amount: financial value of the contract at the time of the award of the contract, exclusive of all allowances and any value added tax or sales tax which the law requires the employer to pay to the contractor.

contract participation goal (CPG): the value of goods, services and works for which the contractor contracts targeted enterprises exclusive of all allowances and any value added tax or sales tax which the law requires the employer to pay to the contractor, expressed as a percentage of the contract amount.

contractor: person or organization that contracts to provide the goods, services or engineering and construction works covered by the contract.

developed enterprise: an enterprise which:

- a) in the case of a single enterprise operating as the main contractor, must be registered in a CIDB Grade 7 or higher in the General Building (GB) or Civil Engineering (CE) Classes of Works, and must be accountable for providing the enterprise development support; or
- b) in the case of a JV agreement, at least one JV partner must be registered in a CIDB Grade 7 or higher in the General Building (GB) or Civil Engineering (CE) Classes of Works, and must be accountable for providing the enterprise development support.

employer: person or organization entering into the contract with the contractor for the provision of goods, services, or engineering and construction works.

employer's representative: person authorized to represent the employer and named as such in the contract data.

fifty percent black owned: an enterprise in which black people:

- c) hold more than 50% of the voting rights that are not subject to any limitation; and
- d) hold more than 50% of the economic interest.

joint venture: grouping of two or more contractors acting as one legal entity, where each is liable for the actions of the other.

main contractor: contractor who subcontracts part of his contract.

practical completion: the state of completion at the end of construction required in terms of the contract.

NOTE Practical completion is commonly understood to be a state of readiness for occupation of the whole works although some minor work may be outstanding. Practical completion in a construction works contract occur when:

- a) FIDIC Short Form of Contract: the date when the Employer considers that the Works have been completed in accordance with the Contract, except for minor outstanding work and defects which will not substantially affect the use of the Works for their intended purpose.
- b) FIDIC Red, Silver and Yellow Book: the date when the Engineer determines that the Works has substantially been reached and can be used for the purpose intended.
- c) GCC 2010: "Practical Completion" means the date when the Engineer certifies that the whole or portion of the Works has reached a state of readiness, fit for the intended purpose, and occupation without danger or undue inconvenience to the Employer, although some work may be outstanding

Draft for Public Comment

- d) JBCC 2000 Principal Building Agreement and JBCC Minor Works Agreement: the date when the principal agent decides that the completion of the works has substantially been reached and can be used for the purpose intended
- e) NEC3 Engineering and Construction Contract: the date when the Project Manager decides that the Contractor has reached Completion as defined in the contract
- f) NEC3 Engineering and Construction Short Contract: the date when the Employer decides that the Contractor has completed the works in accordance with the Works Information except for correcting notified Defects which do not prevent the Employer from using the works and others from doing their work.

targeted enterprise: an enterprise which:

- a) is a contractor registered with the Construction Industry Development Board acting in the capacity of a sub-contractor or JV partner; and
- b) the contractor does not have an equity holding exceeding 20% in the enterprise, either directly or through a flow through calculation in accordance with the Construction Sector Code of Good Practice published in General Notice 862 of 2009 in Government Gazette No of 2009 in terms of the Board Based Black Economic Empowerment Act of 2003 (Act 53 of 2003); and
- c) employs at least three permanent employees other than the owner; and
- d) be registered in terms of the Company's Act of 2008 (Act No. 71 of 2008) or Close Corporation Act of 1984 (Act No. 69 of 1984); and
- e) is 50% or more black owned or 30% or more black women owned; and
- f) has entered into a written relationship agreement of co-operation and assistance with the developed enterprise for the duration of the contract.

thirty percent black woman owned: an enterprise in which black people who are women:

- a) hold more than 30% of the voting rights that are not subject to any limitation; and
- b) hold more than 30% of the economic interest.

3 Requirements

3.1 Contract Participation Goal (CPG)

3.1.1 The requirements of a contract participation goal applies only to:

- a) construction works contracts in the General Building (GB) and to Civil Engineering (CE) classes of construction works;
- b) construction works contracts of an estimated minimum project duration of 6 months; and
- c) construction works contracts in which at least 25% of the main contract could reasonably be expected to be sub-contracted out in one or more of the following CIDB classes of construction works:
 - 1) Civil Engineering (CE);
 - 2) Electrical Engineering Work (EB);
 - 3) General Building Works (GB); or
 - 4) Mechanical Engineering (ME).

3.1.2 The contractor shall engage targeted enterprises in the performance of the contract to the extent that at least a five percent (5%) contract participation goal is achieved.

3.1.3 Each targeted enterprise shall complete the targeted enterprise declaration affidavit contained in Annex A and attach to the applicable written relationship agreement of co-operation and assistance.

Draft for Public Comment

3.1.4 Credits towards the contract participation goal will be denied in respect of the participation of a targeted enterprise should any of the provisions relating to 3.2 not be satisfied.

3.2 Enterprise Development Support

3.2.1 The contractor shall perform a needs analysis on all targeted enterprises and provide internal mentorship which improves the targeted enterprise's performance in at least two developmental areas. Such developmental areas should be guided by the requirements of the cidb Best Practice Contractor Recognition Scheme^{1,2} as well as the NCDP exit requirements for accreditation of contractors³, and may include but are not limited to:

- a) management and labour skills transfer;
- b) establishment of administrative systems;
- c) establishment of cost control systems;
- d) establishment of construction management systems and plans (health and safety, quality and environmental);
- e) planning, tendering and programming skills transfer;
- f) business skills transfer with emphasis on entrepreneurial and negotiation skills;
- g) technical skills transfer with emphasis on innovation;
- h) legal compliance;
- i) procurement skills transfer;
- j) establish credit rating/history;
- k) establish financial loan capacity/history; and/or
- l) contractual knowledge transfer.

3.2.2 The needs analysis shall be mutually agreed upon between the contractor and the targeted enterprise.

3.2.3 The contractor shall appoint an enterprise development co-ordinator. The enterprise development co-ordinator shall:

- a) develop a project specific enterprise development plan to improve the targeted enterprise's performance in the identified developmental areas which allocate resources and monitors progress in relation to improved performance; and
- b) submit to the employer's representative a monthly enterprise development report which documents all mentoring activities that have taken place during that month and the progress made in improving the targeted enterprise's performance in the development area, countersigned by the targeted enterprise.

3.3 Reports after Practical Completion

3.3.1 The contractor shall submit a report in an acceptable format to the employer's representative for acceptance within one week of achieving practical completion.

3.3.2 The information contained in the report shall include not only the value of the contract participation goal that was certified in accordance with this standard but also the CIDB

¹ cidb (2011). *cidb Best Practice Contractor Recognition Scheme; Requirements and Guidelines for Contractor Competence Assessment* (Draft). Construction Industry Development Board, <http://www.cidb.org.za>

² cidb (2011). *cidb Best Practice Contractor Recognition Scheme; Requirements and Guidelines for Construction Management Systems* (Draft). Construction Industry Development Board, <http://www.cidb.org.za>

³ cidb (2011). *Guidelines for Implementing Contractor Development Programmes*. Construction Industry Development Board, <http://www.cidb.org.za>

Draft for Public Comment

registration numbers of each and every targeted enterprise, and the value of the subcontracted works or the participation parameter of the joint venture entered into.

4 Sanctions

In the event that the contractor fails to substantiate that any failure to achieve the contract participation goal was due to reason beyond the contractor's control which may be acceptable to the employer, the sanctions provided for in the contract shall apply.

NOTE: The contract establishes the sanctions that apply and are usually in the form of financial penalties, typically formulated on the difference between the contracted contract participation goal and the contract participation goal achieved in the performance of the contract; the rejection of claims for payments as being incomplete should the appropriate supporting documentation not be provided; and the issuing of completion certificates only after the reports described in 3.2 are received.

Draft for Public Comment

Annex A: Targeted Enterprise Declaration Affidavits

TARGETED ENTERPRISE DECLARATION To be completed for each targeted enterprise	
Section A: Employer Information	
cidb Employer Number	<input type="text"/>
Employer Name	<input type="text"/>
Section B: Contract Data	
cidb Contract Number	<input type="text"/>
Contract Title	<input type="text"/>
	<input type="text"/>
	<input type="text"/>
Date of Practical Completion	<input type="text"/> Y <input type="text"/> Y <input type="text"/> Y <input type="text"/> Y <input type="text"/> M <input type="text"/> M <input type="text"/> D <input type="text"/> D
Estimated final value of contract (including VAT, variations and any price adjustment)	
R	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> 0 0 0 . 0 0
Section C: Main Contractor / JV Information	
cidb Contractor Registration Number of main / lead contractor	<input type="text"/>
Name of contractor / Joint Venture	<input type="text"/>
If the case of a JV;	
Name of developed enterprise (i):	<input type="text"/>
cidb Contractor Registration Number:	<input type="text"/>
Name of developed enterprise (ii):	<input type="text"/>
cidb Contractor Registration Number:	<input type="text"/>

Continued Over

100

Continued Over

Draft for Public Comment

Section E: Agreement of Co-Operation and Assistance									
List the areas of development identified (at least two):									
Section F: Contract Participation for Targeted Enterprise									
a) Estimated final value of contract with targeted enterprise (excluding VAT, including variations and price adjustment)									
R <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> 0 0 0 . 0 0									
b) Estimated final value of contract from Section B (excluding VAT, including variations and price adjustment)									
R <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> 0 0 0 . 0 0									
Contract participation for targeted enterprise a/b (%) <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>									
Section G: Declaration: Enterprise Development Co-ordinator									
Name of Co-ordinator Title <input type="text"/> Initials <input type="text"/> <input type="text"/> Surname <input type="text"/>									
Designation <input type="text"/>									
ID / Passport <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>									
e-mail <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>									
Mobile 0 <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>									
Office Telephone 0 <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/>									
I, the undersigned warrant that:									
<ul style="list-style-type: none"> • I am duly authorised to submit this notice behalf of the Contractor / JV; and • The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct. 									
Signature <input style="width: 100%;" type="text"/>									
Date completed <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>									

Continued Over

Draft for Public Comment

Section H: Declaration: Targeted Enterprise Representative																																																																																																			
Name of Representative Title																									Initials										Surname																																																																
Designation																																																																																																			
ID / Passport																																																																																																			
e-mail																																																																																																			
Mobile																																																																																																			
Office Telephone																																																																																																			
I / we agree																									disagree										with the Enterprise Development Co-ordinator's assessment of compliance with the Enterprise Development support provided																																																																
I / we appeal the assessment by the Enterprise Development Co-ordinator																																																																																																			
I, the undersigned warrant that: <ul style="list-style-type: none"> I am duly authorised to submit this notice behalf of the Q ualifying Developing Enterprise The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct . 																																																																																																			
Signature																																																																																																			
Date completed																																																																																																			
Section I: Declaration: Employer's Representative																																																																																																			
Name of Representative Title																									Initials										Surname																																																																
Designation																																																																																																			
ID / Passport																																																																																																			
e-mail																																																																																																			
Mobile																																																																																																			
Office Telephone																																																																																																			
I / we agree																									disagree										with the Enterprise Development Co-ordinator's assessment of compliance with the Enterprise Development support provided																																																																
I / we appeal the assessment by the Enterprise Development Co-ordinator																																																																																																			
I, the undersigned warrant that: <ul style="list-style-type: none"> I am duly authorised to submit this notice behalf of the Employer The contents of this notice are within my personal knowledge, and are to the best of my belief both true and correct. 																																																																																																			
Signature																																																																																																			
Date completed																																																																																																			