
GOVERNMENT NOTICES GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF PUBLIC WORKS DEPARTEMENT VAN OPENBARE WERKE

No. 794

5 October 2012

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000

The Minister of Public Works intends to amend the Construction Industry Development Regulations, published under GN 692 in GG 26427 of 9 June 2004, as amended. The draft amendment regulations annexed hereto are accordingly published for public comment.

Interested persons are invited to submit their written comments on the proposed regulations to the Director-General of the Department of Public Works within 60 days of the date of publication of this notice by-

- (a) posting it to: Department of Public Works, Private Bag X65, Pretoria, 0001;
- (b) delivering it by hand at: Central Government Building, Corner Vermeulen & Bosman Streets, Pretoria, 0001; or
- (c) e-mailing it to: gugu.mgwebi@dpw.gov.za.

Comments must be marked for the attention of Gugu Mgwebi.

Comments received after the closing date may not be considered.

T.W NXESI (MP)
MINISTER OF PUBLIC WORKS

DEPARTMENT OF PUBLIC WORKS**No.****2012****CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000**

The Minister of Public Works has, in terms of section 33 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000), amended the Construction Industry Development Regulations, published under GN 692 in GG 26427 of 9 June 2004, as amended, in the manner set out in the Schedule.

SCHEDULE**Contents****1. Definitions**

In these Regulations, unless the context otherwise indicates, every word takes the meaning as defined in the Act, and -

“**the Act**” means the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000), as amended;

“**the Regulations**” means the Construction Industry Development Regulations, published under Government Notice No. R. 692 in Government Gazette No. 26427 of 9 June 2004, as amended by Government Notice No. R. 1333 published in Government Gazette No. 26991 of 12 November 2004, Government Notice No. R. 751 published in Government Gazette No. 27831 of 22 July 2005, Government Notice No. R. 842 published in Government Gazette No. 29138 of 18 August 2006, Government Notice No. R. 1121 published in Government Gazette No. 30510 of 23 November 2007, and Government Notice No. R.1224 published in Government Gazette No. 31603 of 14 November 2008.

2. **Amendment of Regulation 1**

Regulation 1 is amended by deleting the definition of “*qualified person*”.

3. **Insertion of Regulation 3(l) in Regulations**

The following sub-regulation is inserted after sub-regulation 3(k):

“(l) *the broad-based black economic empowerment recognition level of a contractor prescribed in terms of the Codes of Good Practice issued under the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003) from time to time.*”

4. **Deletion of Regulation 7(4)(h)**

Regulation 7(4)(h) is deleted.

5. **Substitution of Regulations 11(2) and 11(2A)**

Regulations 11(2) and 11(2A) are substituted for the following Regulation:

“(2) *The financial capacity of a contractor is determined by 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 equals or 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).”*

6. **Deletion of Regulation 11(2B)**

Regulation 11(2B) is deleted.

7. **Insertion of Regulation 11(4A) and 11 (4B) in Regulations**

The following sub-regulations are inserted after sub-regulation 11(4)(g):

“(4A) A contractor seeking the transfer of records referred to in subregulation (4), must apply to the Board in writing for its approval of such transfer and must furnish such particulars as the Board may require.

(4B) The Board must, within 30 working days from receipt of a duly completed application referred to in subregulation (4A), notify the contractor of its decision.”

8. **Substitution of Regulation 11(5)**

Sub-regulation 11(5) is substituted for the following sub-regulation:

“(5) The works capability of a contractor must be determined by establishing whether-

- (a) the contractor has satisfied the requirements contemplated in regulation 12(5) in relation to any specific class of construction works; and*
- (b) 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 equals or exceeds the amount of that works capability designation as contemplated in regulation 12(7).”*

9. **Amendment of Regulation 12(1)**

Regulation 12 (1) is amended by the substitution in sub-regulation (1) thereof for Table 1 of the following Table:

“TABLE 1

<i>Designation</i>	<i>Upper limit, (R) of tender value range</i>	<i>Best Annual Turnover (50% of Upper Limit of tender value range)</i>	<i>Largest Contract (22.5% of Upper Limit of tender value range. 20 % for Grade 2)</i>	<i>Available capital (R)(10% of Upper Limit of tender value range, 5% for Grade 3 & 4)</i>
1	200 000	-	-	-
2	650 000	-	R 130,000	-
3	2 000 000	1,000,000	R 450,000	100,000
4	4 000 000	2,000,000	R 900,000	200, 000
5	6 500 000	3,250,000	R 1,500,000	650, 000
6	13 000 000	6,500,000	R 3,000,000	1,300 000
7	40 000 000	20,000,000	R 9,000,000	4,000.000
8	130 000 000	65,000,000	R 30,000,000	13,000.000
9	No Limit	200,000,000	R 90,000,000	40,000.000

10. Deletion of Regulation 12(4)

Regulation 12(4), together with Table 4A and Table 4B referred to therein, is deleted.

11. Amendment of Regulation 12(7)

Regulation 12(7) is amended by substituting in sub-regulation (7) thereof for Table 5 of the following Table:

“TABLE 5

<i>Works Capability</i>		<i>Largest Contract Executed in The Last 5 Years in The Class Of Construction Works Applied For (R) Largest Contract (22.5% of Upper Limit of tender value range. 20 % for Grade 2)</i>
<i>Designation</i>	<i>Maximum Value of Contract That A Contractor is Considered Capable of Performing (R)</i>	
1	200 000	-
2	650 000	130, 000
3	2 000 000	450, 000
4	4 000 000	900 000
5	6 500 000	1,500 000
6	13 000 000	3,000 000
7	40 000 000	9, 000 000
8	130 000 000	30,000 000
9	No Limit	90, 000 000

12. “Deletion of Regulation 12(8)

Regulation 12(8) is deleted.

13. Amendment of Regulation 17

Regulation 17 is substituted for the following regulation:

“17. A contractor registered in a contractor grading designation indicated in column 1 of the Table 8 below, is considered to be capable of undertaking a contract in the range of tender values indicated in column 2 of that table in the class of the construction works to which the category of registration of that contractor relates.

TABLE 8

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

14. Insertion of Regulation 17A in Regulations

The following subregulation is inserted after regulation 17:

“Tender value range adjustments

17A.(1) The Minister must, at least once every three years, after consultation with the Board, determine-

(a) the range of tender values for purposes of determining the values of contracts that contractors are considered capable of undertaking; and

(b) a method for the calculation of the range of tender values contemplated in subregulation (1)(a).

(2) Before making a determination contemplated in this subregulation, the Minister must publish in the Gazette a notice-

(a) setting out the proposed range of tender values and method of calculation for purposes of this subregulation; and

(b) inviting written submissions on that proposal, within the period stated in the notice, of not less than thirty days from the date of publication of the notice.

(3) If the Minister alters the proposed range of tender values and method of calculation contemplated in subregulation 2(a), as a result of a comment, he or she need not publish those alterations before making the determination.

(4) Within six months after publishing a notice in terms of subregulation (2), the Minister must publish in the Gazette a notice-

(a) setting out the new range of tender values and method of calculation for purposes of this subregulation; and

(b) the effective date of the range of tender values.

(5) In the event that a subsequent range of tender values referred to in subregulation 17A.(1) is not timeously published by the Minister, the last published range of tender values shall, notwithstanding the provisions of subregulation 17A.(1), remain in force and effect until the publication of the next range of tender values.

(6) Notwithstanding a determination made by the Minister in terms of subregulation (1), a contractor's grading designation will remain unchanged for the duration of the contractor's registration existing at the time of the determination."

15. Amendment of Regulation 25(5)(a)

Subregulation 25(5)(a) is substituted for the following subregulation:

“(a) every member of the joint venture is a registered contractor in terms of these Regulations and the lead partner has a contractor grading designation of not more than one level below the required grading designation in the class of construction works under consideration and possesses the required recognition status; and”

16. Substitution of Regulation 25(6)

Sub-regulation 25(6) is substituted for the following sub-regulation:

“(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 members to the joint venture; and*
- (b) the sum of the available capital of all the members to the joint venture;*

but where –

- (i) a contractor is graded solely on the basis of the 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) and (b) that the contractor was not assessed on, in accordance with the following formula:*

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

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

17. Amendment of Schedule 3: Classes of construction works

- (1) General building works under Schedule 3 is amended by deleting the words “fences other than classified as SQ” in the fifth column.

(2) SQ Specialist works under Schedule 3 is amended by substituting the definition for the following:

“The development, extension, installation, repairs, dismantling of precast walls, installation of wire perimeter fencing, diamond perimeter fencing, palisade steel fencing with posts and stay at intervals”

18. Transitional measures

(1) An application for registration as a contractor that was received before the commencement of these Construction Industry Development Amendment Regulations, 2012, may be assessed and evaluated in accordance with the requirements for registration as a contractor contained in the Regulations before the commencement of these Regulations but any new application that is received after the commencement of these Regulations must be assessed and evaluated in accordance with the Regulations as amended.

(2) Any renewal process or update of particulars that has been initiated by the Board may be finalised in terms of the Regulations before the commencement of these Regulations.

(3) A contractor who is registered before publication in the Gazette of the tender value range adjustments, the tender value range applicable at the time of registration will remain valid and the three year registration period will remain valid.

(4) Any investigation or prosecution initiated before the commencement of these Regulations must be finalised in accordance with the Regulations that were applicable before these Regulations commenced.

(5) A tender invitation that was published before the commencement of these Regulations must be evaluated in accordance with the Regulations that were applicable at the time of invitation and in accordance with the conditions of tender specified in the tender data.

19. Short title and commencement

These regulations are called the Construction Industry Development Amendment Regulations, 2012, and come into effect on the date of publication thereof in the *Gazette*.