



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 468

Pretoria, 9 June 2004
Junie

No. 26427



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GOVERNMENT NOTICE

DEPARTMENT OF PUBLIC WORKS

No. 692

9 June 2004

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

The Minister of Public Works has under section 33 of the Construction Industry Development Board Act, 2000, (Act No. 38 of 2000) (the Act), made the regulations set out in the Schedule. These Regulations commence on date of publication but-

- (a) Part III, for a project of which the project value exceeds R3million and Part IV, in relation to all projects, commence in-
 - (i) the Limpopo Provincial Department of Public Works on 15 October 2004;
 - (ii) the eThekweni Metropolitan Council on 14 January 2005.
 - (iii) the National Department of Public Works (all regions) and the Gauteng Department of Transport, Roads and Public Works on 16 May 2005;
 - (iv) all organs of state not mentioned above and all metropolitan councils other than the eThekweni Metropolitan Council, on 15 August 2005;
 - (vi) all local authorities other than those mentioned above, on 14 November 2005,and the above organs of state must apply the register of contractors to its procurement process as contemplated in section 16(4) of the Act from the above dates and in accordance with Part IV of these Regulations;
- (b) Part III commences in relation to all private sector projects of which the project value exceeds R3 million on 14 November 2004;
- (c) Notwithstanding paragraphs (a) and (b), Part III commences in relation to all public and private sector projects of which the project value exceeds R300 000.00 on 15 September 2005.

SCHEDULE

PART 1 INTERPRETATION

Definitions

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

“approved” means approved by the Board;

"code of conduct" means the code of conduct published by Board Notice No 127 in *Gazette* No. 25656 of 31 October 2003;

"construction procurement" means procurement in the construction industry, including the invitation, award and management of contracts;

"class of construction works" means a class referred to in Schedule 3;

"employable capital" means the liquid cash resources available to a contractor or the amount that a contractor is able to muster as working capital, consisting of bank balances, loans that may be leveraged and any financial sponsorship as calculated in terms of regulation 11(3);

"employer" means a person, body of persons or organ of state who enters into a prime contract with a contractor for the provision of construction works;

"financial sponsorship" means any financial support from another party that contributes to the value of the applicant's employable capital;

"joint venture" means a grouping of two or more contractors who jointly and severally undertake to perform a construction works contract;

"NHBRC" means the National Home Builders Registration Council, established in terms of the Housing Consumers Protection Measures Act, 1998;

"practical completion certificate" means a certificate issued in terms of a contract by the employer, signifying that the whole of the construction works have reached a state of readiness for occupation or use for the purposes intended, although some minor work may be outstanding;

"prime contract" means a construction works contract that does not form part of the scope of work of another contractor;

"principal" means a natural person who is a partner in a partnership, a sole proprietor, a director in a company or a member of a close corporation;

"programme" means a series of projects aimed collectively at a predefined outcome;

"qualified person" means a person who is recognised by virtue of his or her training and experience as having the necessary qualifications to undertake construction works in a specific category as contemplated in regulation 12(8);

"the Act" means the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000).

Value

2. The rand value, tender value, tendered price, contract value or project value, wherever it appears in these Regulations, includes value added tax levied under the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

PART II

REGISTER OF CONTRACTORS

Particulars to be contained in register of contractors

3. The register of contractors must, in relation to each contractor registered in terms of these Regulations, reflect-

- (a) the name;
- (b) the category of registration;
- (c) subject to regulation 36(2), the particulars of the contractor submitted together with the application in terms of regulation 7, 8 or 9;
- (d) the fees paid by the contractor in terms of these Regulations;
- (e) any fees owed by that contractor in terms of these Regulations;
- (f) any refund paid to that contractor;
- (g) any investigation in terms of the Act against a contractor which is pending or finalised;
- (h) any restriction to participate in public procurement in terms of legislation regulating procurement of a registered contractor or any principals of that contractor, prohibiting that contractor to submit a tender offer to an organ of state;
- (i) any court finding in terms of regulation 30;
- (j) the suspension of the registration or the deregistration of that contractor or the removal of the name of that contractor from the register.

Exemption

4. Any contractor, who is registered as a homebuilder in terms of the Housing Consumer Protection Act, 1998 is, subject to regulation 15, exempt from registration in terms of these Regulations and the particulars of that contractor may be reflected on the register contemplated in section 15 of the Act, but that contractor is exempt only in the case of construction works in relation to provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998.

Targeted development programmes

5. From the register of contractors, a client may identify potentially emerging contractors within particular contractor grading designations for the purpose of development programmes that target the improvement and progress of contractors.

Categories of registration

6. (1) The categories of registration are determined by:

- (a) the contractor grading designation contemplated in regulation 11;
- (b) the status of a contractor as a potentially emerging enterprise;
- (c) from a date determined by the Minister in the *Gazette*, recognition status in terms of a best practice recognition scheme; and
- (d) from a date determined by the Minister in the *Gazette* the status of recognition of the progress of a contractor in terms of any black economic empowerment programme,

and must be reflected by alpha-numerical characters, where the first three characters denote the contractor grading designation and the following characters reflect the status of the contractor referred to in paragraphs (b),(c) and (d).

(2) A contractor may only be registered in a category contemplated in subregulation (1) if that contractor satisfies the requirements for such registration determined in these Regulations.

Application for registration as contractor

7. (1) A contractor who wishes to be registered in terms of these Regulations must on the approved form apply to the Board for registration in a category contemplated in regulation 6.

(2) A contractor must apply to the Board for registration in at least one contractor grading designation.

(3) A contractor may be registered in more than one class of works but may only hold one contractor grading designation in relation to a particular class of construction works.

(4) An application for registration must be accompanied by-

- (a) the fees as shown in Schedule 2;
- (b) if applicable, a summarized financial statement of the net asset value of the contractor certified by an auditor;
- (c) if applicable, a statement of the applicant's turnover of the two financial years immediately preceding the application certified by an auditor, or supporting evidence of such turnover as set out in the South African Revenue Services Form VAT 201 (Return for remittance of value added tax);
- (d) in the case of a company or a close corporation the registration number, a certificate of incorporation and the latest name change, if any, issued in terms of the Companies Act, 1973 (Act No.61 of 1973) or the Close Corporations Act, 1984(Act No. 69 of 1984), as the case may be;
- (e) an original tax clearance certificate issued by the South African Revenue Service;
- (f) certified copies of the identity documents of the principal or principals of the contractor, but where there are more than twenty principals, certified copies of the identity documents of only twenty principals may be submitted;
- (g) if applicable, a schedule of financial sponsorship indicating the nature and value of any such sponsorship and proof thereof;

- (h) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration;
- (i) in the case of an application relating to the class of works "electrical engineering", a certified copy of the contractor's electrical contractor licence issued by the Electrical Contracting Board of South Africa;
- (j) if applicable, certified copies of the contractor's registration certificate issued in terms of the Housing Consumer Protection Measures Act, 1998, (Act No. 95 of 1998) and proof of current payment;
- (k) if a contractor is registered under an emerging contractor development scheme, proof of that registration;
- (l) documentary proof by the employer or his or her representative of contracts completed as contemplated in regulation 11(2)(b) and 11(5)(c) and for the purpose of this paragraph, "completed" means the stage when the construction works have been completed or when the construction works have reached a state of readiness for occupation, or use for the purposes intended, although some minor work may be outstanding; and
- (m) any other information required by the Board in relation to the category of registration of a contractor.

(5) If an application in terms of this regulation is made on the worldwide web, the supporting documentation referred to in subregulation (4) must be submitted to the Board by mail or by hand and the application is not considered to have been duly completed as contemplated in regulation 10(3), until such submission has been received by the Board.

(6) The Board may obtain the tax clearance certificate referred to in subregulation (4)(e) on behalf of the contractor if the contractor authorises the Board to do so.

(7) The Board must for the purpose of assessing an application for registration and subject to section 30 of the Act, take reasonable steps to verify the information submitted by a contractor in terms of this regulation.

Application for amendment of category status

8. (1) An application in terms of section 17(2) of the Act to amend the category status of a contractor must, where applicable, be accompanied by-

- (a) a statement of the contractor's turnover in the two financial years preceding the application, certified by an auditor or supporting evidence of such turnover as set out in the South African Revenue Services Form VAT 201 (Return for remittance of VAT);
- (b) a summarized financial statement of the net asset value of the contractor certified by an auditor;

- (c) a schedule of financial sponsorship indicating the nature and value of any such sponsorship offered to the contractor;
- (d) proof of financial sponsorship referred to in paragraph (c); ;
- (e) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration;
- (f) in the case of an application relating to the class of works "electrical engineering", a certified copy of the contractor's electrical contractor licence issued by the Electrical Contracting Board of South Africa;
- (g) if applicable, certified copies of the contractor's registration certificate issued in terms of the Housing Consumer Protection Measures Act, 1998, and proof of current payment;
- (h) any other information required by the Board in relation to the contractor grading designation of a contractor.

(2) The Board must for the purpose of assessing an application in terms of this regulation and subject to section 30 of the Act, takes reasonable steps to verify the information submitted by a contractor in terms of this regulation.

(3) If an application in terms of this regulation is made on the worldwide web, the supporting documentation referred to in subregulation (1) must be submitted to the Board by mail or by hand and the application is not considered to have been duly completed as contemplated in regulation 10(3), until such submission has been received by the Board.

(4) Regulation 10 applies with the necessary changes to an application in terms of this regulation.

Renewal of registration

9. These regulations apply with the necessary changes to an application for the renewal of registration in terms of section 20 of the Act.

Procedure in relation to registration

10. (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) The Board must appoint an assessment committee, consisting of three members, from its staff complement to approve the evaluations of the assessor and the Board may appoint other persons who are not employed by the Board and who have relevant expertise, to assist that committee, but that other persons may only make a recommendation in relation to the approval of an assessment by the assessor.

(3) Subject to subregulations (4) and (5), the assessment committee 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.

(4) The assessment committee must, if it decides on a category of registration other than that applied for by the contractor, notify the contractor of such decision, before registering that contractor in terms of subregulation (3).

(5) The contractor may, if the contractor does not agree with the categorization decided on by the assessment committee, subject to section 3 of the Promotion of Administrative Justice Act, 2000, (Act No. 3 of 2000), submit reasons to the assessment committee for reviewing the assessment.

- (6) The registration of a contractor is subject to the conditions that the contractor concerned-
- (a) from a date determined by the Minister by notice in the *Gazette*, complies with the code of conduct;
 - (b) submits an original tax clearance certificate to the Board at least three weeks prior to the expiry of the current tax clearance certificate; and
 - (c) subject to regulations 8 and 36(2), remains in compliance with the requirements in terms of these Regulations in relation to the category in which that contractor is registered.

Manner of determination of contractor grading designation

11. (1) The contractor grading designation of a contractor is determined by determining the least of –

- (a) the financial capability of the contractor in accordance with subregulation (2); and
 - (b) the works capability of the contractor in accordance with subregulation (5).
- (2) The financial capability of a contractor is determined by establishing whether-
- (a) the contractor's average annual turnover of the two financial years immediately preceding the application equals or exceeds the minimum annual turnover determined in relation to the financial capability designation contemplated in regulation 12(1);
 - (b) the contractor during the two financial years immediately preceding the application has completed at least one construction works contract of which the total contract value, exceeds the amount of the financial capability referred to in regulation 12(1); and
 - (c) the contractor has the ability to mobilize a total employable 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).
- (3) Total employable capital is determined in terms of the formula $(NAV \times r) + s$, where-
- (a) NAV is the nett asset value (sum of the contractor's assets less the sum of the contractor's liabilities) determined from the contractor's annual financial statements of the two years immediately preceding the application and summarized on the

approved form;

- (b) "r" is the bank rating factor determined in accordance with regulation 12(2) and (3) and issued by the contractor's bank; and
- (c) "s" is the total value of financial sponsorship.

(4) The Board must be satisfied that the financial sponsorship submitted by an applicant in terms of these Regulations, is of a nature that will enable the applicant to comply with the requirements of regulation 12.

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

- (a) 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;
- (b) the contractor has satisfied requirements contemplated in regulation 12(5), (6) or (8) in relation to any specific class of construction works; and
- (c) the contractor has during the two financial years immediately preceding the application completed at least one construction works contract in the category of construction works for in which the contractor wishes to register, of which the value exceeds the amount of that works capability designation as contemplated in regulation 12(7).

Requirements in relation to contractor grading designation

12. (1) The values required to determine the financial capability of a contractor are as indicated in table 1 below:

TABLE 1

Financial Capability		Track Record Over The Past 2 Years		Minimum Current Financial Capability
Designation	Maximum value of contract that a contractor is considered capable of performing (upper limit of tender value range)	Minimum Average Annual Turnover	At Least one Contract With a Value Greater Than	Employable Capital (EC) of at least (<i>Nett Asset Value x Bank Rating Factor</i>) + <i>financial sponsorship</i>
1	R 100 000	R 0	R 0	R 0
2	R 300 000	R 0	R 80 000	R 60 000
3	R 1 000 000	R 780 000	R 260 000	R 195 000
4	R 3 000 000	R 2 400 000	R 800 000	R 600 000
5	R 5 000 000	R 4 800 000	R 1 600 000	R 1 200 000
6	R 10 000 000	R 9 000 000	R 3 000 000	R 2 250 000
7	R 30 000 000	R 24 000 000	R 8 000 000	R 6 000 000
8	R 100 000 000	R 78 000 000	R 26 000 000	R 19 500 000
9	No limit	R 240 000 000	R 80 000 000	R 60 000 000

Provided that, in the case of an application for registration in –

- (a) contractor grading designation "2", the applicant must meet at least the requirement as indicated for that contractor grading designation in column 4 of table 1, or the requirement so indicated in column 5 of that table; or
- (b) contract or grading designation "3" or "4", the applicant must meet the requirement as indicated in relation to that designation in column 4 of table 1 and at least one of the requirements so indicated in that table in column 3 or 5.

(2) The bank rating must be requested for a period of one month and the values on which bank rating must be based in relation to the financial capability of the contractor are as indicated in table 2 below:

TABLE 2

Financial Capability *		Value On Which Bank Rating Must Be Based
Designation	Maximum Value Of Contract That A Contractor Is Considered Capable Of	
1	R 100 000	No requirement
2	R 300 000	R24 000
3	R 1 000 000	R78 000
4	R 3 000 000	R240 000
5	R 5 000 000	R480 000
6	R 10 000 000	R900 000
7	R 30 000 000	R2 400 000
8	R 100 000 000	R7 800 000
9	No limit	R2 4 000 000

(3) The bank-rating factor is determined as indicated in table 3 below:

TABLE 3

Bank Code	Description of Bank Code	Bank Rating Factor (r)
A	Undoubted for the amount of enquiry	3
B	Good for the amount of enquiry	3
C	Good for the amount quoted if strictly in the way of business	2
D	Fair Trade risk for amount of enquiry	1
E	Figures considered too high	1
F	Financial position unknown	1
G	Occasional dishonours	1
H	Frequent dishonours	1

(4) The minimum number of qualified persons employed permanently full time or the equivalent number of qualified persons so employed on a part time basis in relation to a works capability designation are as indicated in table 4 below:

TABLE 4

Works Capability		Minimum Number of Full-time equivalent Qualified Persons Required for Registration in a Category of Construction Works				
Designation	Maximum Value Of Contract That A Contractor Is Considered Capable Of Performing	General Building (GB)	Civil Engineering (CE)	Electrical Engineering (EE)	Mechanical Engineering (ME)	Specialist Works (SP)
1	R 100 000	-	-	-	-	-
2	R 300 000	-	-	-	-	-
3	R 1 000 000	-	-	-	-	-
4	R 3 000 000	-	-	-	-	-
5	R 5 000 000	-	-	-	-	-
6	R 10 000 000	-	-	1	1	1
7	R 30 000 000	1	1	2	2	2
8	R 100 000 000	2	2	3	3	3
9	No limit	3	3	4	4	4

(5) For the class of construction works: "Electrical Engineering Works" (EE), a contractor must be in possession of an electrical contractor license issued by the Electrical Contracting Board of South Africa.

(6) For the class of construction works: "Specialist Building Works: Building of Homes" as contemplated in the Housing Consumer Protection Measures Act, 1998, a contractor must be registered as a homebuilder in terms of that Act.

(7) To qualify to be categorised in a specific works capability designation as indicated in columns 1 and 2 of table 5 below, a contractor must, in addition to the requirements of subregulation (5), have successfully completed a contract of at least the value indicated in column 3 of table 5 below:

TABLE 5

Works Capability		Largest Contract Executed In The Last 2 Years In The Class Of Construction Works Applied For
Designation	Maximum Value Of Contract That A Contractor Is Considered Capable Of Performing	
1	R 100 000	No requirement
2	R 300 000	R 80 000
3	R 1 000 000	R260 000
4	R 3 000 000	R 800 000
5	R 5 000 000	R 1 600 000
6	R 10 000 000	R 3 000 000
7	R 30 000 000	R 8 000 000
8	R 100 000 000	R 26 000 000
9	No limit	R 80 000 000

(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 in accordance with the Engineering Profession Act, 2000 (Act No. 46 of 2000) or the Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000); and

- (b) for the classes of construction works "General Building" and "Specialist Works" is registered in accordance with the-
 - (i) the Project and Construction Management Professions Act, 2000;
 - (ii) the Engineering Profession Act, 2000;
 - (iii) the Architectural Profession Act, 2000 (Act No. 44 of 2000);
 - (iv) the Quantity Surveying Profession Act, 2000 (Act No. 49 of 2000); or
 - (v) the Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000).

Board to identify potential emerging enterprise status

13. The Board must identify whether a contractor who has applied for registration in the category contemplated in regulation 6(1)(b), can be classified as a potentially emerging enterprise by:-

- (a) identifying the principals who are previously disadvantaged persons;
- (b) establishing whether the principals who are previously disadvantaged persons own at least fifty percent of the enterprise;
- (c) establishing whether the principals who are previously disadvantaged persons possess and exercise-
 - (i) the authority to manage the assets and daily operations of the enterprise; and
 - (ii) appropriate managerial and financial authority in determining the policies and directing the operations of the enterprise.

Requirements for a contractor who is a newly constituted enterprise

14. (1) The contractor grading designation for a newly constituted enterprise must be determined in accordance with regulation 11 but the total employable capital of the contractor must be equal to or exceed the values indicated in column 3 of table 6 below in relation to the financial capability designation indicated in columns 1 and 2 of that table, and regulation 11(2)(c) and (5)(c) do not apply.

TABLE 6

Financial Capability		Minimum Current Capability
Designation	Maximum value of contract that a contractor is considered capable of performing	Employable Capital (EC) of at least (<i>Nett Asset Value x Bank Rating (r)</i>) + financial sponsorship(s)
1	R 100 000	No requirement
2	R 300 000	R 60,000
3	R 1 000 000	R 325,000
4	R 3 000 000	R 1,000,000
5	R 5 000 000	R 2,000,000
6	R 10 000 000	R 3,750,000
7	R 30 000 000	R 10,000,000
8	R 100 000 000	R 32,500,000
9	No limit	R 100,000,000

(2) If a contractor has been in operation for a period exceeding one year but less than two years, the contractor grading designation of the contractor is the most favourable of the contractor grading designations determined in accordance with subregulation (1) or regulation 10, but where the annual turnover of only one year is required.

Recognition of registration as homebuilder

15. The contractor grading designation of a contractor who is registered as a home builder in terms of the Housing Consumer Protection Measures Act, 1998 is deemed to be registered in the class: "SP: Home Building" and the grading of that contractor must be determined in accordance with table 7 below:

TABLE 7

Contractor Grading		Equivalent registration in terms of the Housing Consumer Protection Measures Act, 1998	
Designation	Maximum Value Of Contract That A Contractor Is Considered Capable Of	(NHBRC Grading reflects the number of houses that a Home Builder may construct simultaneously)	
		P Rating	S Rating
1	R 100 000	2	5
2	R 300 000	5	16
3	R 1 000 000	15	54
4	R 3 000 000	46	162
5	R 5 000 000	76	271
6	R 10 000 000	152	To be determined by the Board in consultation with NHBRC
7	R 30 000 000	455	
8	R 100 000 000	To be determined by the Board in consultation with the NHBRC	
9	No limit		

Foreign enterprise

16. The contractor grading designation of a contractor who is not based in South Africa, is determined in accordance with these Regulations, but is based on the exchange rate in ZAR on the date

of receipt of a duly completed application.

Tender value range contractor considered capable of undertaking

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 columns 3 and 4 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	Tender Value Range designation	Range of Tender Values	
		Greater than	Less than or equal to
1(class of construction works)	1	R 0	R 100 000
2(class of construction works)	2	R 100 000	R 300 000
3(class of construction works)	3	R 300 000	R 1 000 000
4(class of construction works)	4	R 1 000 000	R 3 000 000
5(class of construction works)	5	R 3 000 000	R 5 000 000
6(class of construction works)	6	R 5 000 000	R 10 000 000
7(class of construction works)	7	R 10 000 000	R 30 000 000
8(class of construction works)	8	R 30 000 000	R 100 000 000
9(class of construction works)	9	R 100 000 000	No limit

PART III REGISTER OF PROJECTS

Registration of projects

18. (1) An employer must, within 21 working days from the date on which a contractor's offer to perform a construction works contract is accepted in writing by the employer, apply on the approved form to the Board for the registration of every project, consisting of a single construction works contract, of which the contract value exceeds a value determined by the Minister by notice in the *Gazette*.

(2) The Board must, within 30 working days from receipt of the duly completed application in terms of subregulation (1), register the project concerned and supply the employer with a receipt of registration.

(3) The employer must indicate in the application referred to in subregulation (1), whether -

- (a) the project being registered relates to a project that consists of a series of contracts; or
- (b) the project being registered relates to a programme, if any;
- (c) the project relates to a public-private partnership; and
- (d) that employer acts on behalf of a client.

(4) The client that initiated the project concerned must pay the fee as shown in Schedule 2, on—

- (a) the date of registration of the project; or
- (b) in advance in relation to a number of projects that are to be registered by that client, for a period agreed on with the Board.

Exemption

19. Any project consisting of a contract entered into with a client or employer, that relates only to construction works in relation to provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998) is exempt from these regulations.

Representative of employer

20. (1) The employer must on the approved form identify a person who acts as its representative and who is authorised to access the register of projects and the register of contractors on its behalf.

(2) The employer must on the approved form notify the Board if the person identified in terms of subregulation (1) as its representative for any reason ceases to act as such.

(3) The employer must ensure that his or her representative complies with the conditions of

use of the register of contractors.

Reporting

21. (1) The employer must in relation to a construction works contract registered in terms of these Regulations, within one calendar month of the date -

- (a) of issue of a practical completion certificate;
- (b) on which that contract is renewed;
- (c) on which a contract is cancelled or terminated; and
- (d) of settling all amounts owing to the contractor in accordance with the contract, as determined by the employer,

submit a status report to the Board in the format determined by the Board.

(2) An employer must notify the Board of any arbitration entered into or litigation initiated in relation to a construction works contract registered in terms of these Regulations, within one calendar month from the starting date of that arbitration or litigation.

(3) An employer who is an organ of state, who awards a contract to an emerging enterprise who has a contractor grading designation lower than that required for the contract as contemplated in Part IV of these Regulations, must on the approved form notify the Board of the nature of the financial or management support that is provided to the contractor concerned as contemplated in that Part and the benefit derived from such support in the development of that contractor.

(4) If the failure by an organ of state to register a project in terms of these Regulations come to the attention of the Board must report that failure by that organ of state to the Auditor-General.

Best practice project assessment scheme

22. Subject to section 23 (2) and (3) of the Act, every project in excess of the value determined in terms of that section, must be assessed in relation to the compliance with best practice standards and guidelines published by the Board in terms of section 5 of the Act.

PART IV

INVITATION, AWARD AND MANAGEMENT OF CONSTRUCTION WORKS CONTRACTS

Application

23. This Part applies only to a client or employer who is an organ of state.

Preparation for construction procurement

24. Every client or employer who is soliciting tenders in the construction industry must do so in accordance with-

- (a) if applicable, the Regulations in terms of the Public Finance Management Act: Framework For Supply Chain Management as published in Gazette no. 25767 of 5 December 2003; and
- (b) the Standard for Uniformity in Construction Procurement, published by the Board by notice in the *Gazette*.

Invitation of tender or expression of interest for construction works contracts

25. (1) 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, or who are capable of being so registered within ten working days after the closing date for those submissions or 21 working days in the case of expressions of interest, may be evaluated in relation to a project of any value.

(2) Despite subregulation (1), a client or employer, under extreme conditions, is entitled to determine that only submissions of tender offers or expressions of interest by contractors who are already registered in terms of these Regulations will be evaluated and for the purpose of this regulation, "extreme conditions" mean conditions where-

- (a) human injury or death;
- (b) human suffering or deprivation of human rights;
- (c) serious damage to property or financial loss;
- (d) injury, suffering or death to livestock or other animals;
- (e) serious environmental damage or degradation; or
- (f) interruption of essential services,

is present or imminent.

(3) The category of registration for contractors whose submissions of tender offers or expressions of interest qualify to be evaluated in terms of subregulation (1), is -

- (a) a contractor grading designation not lower than that derived from-
 - (i) the selection of a single class of construction work that best describes the construction works contract for which tender offers or expressions of interest is invited, or the broad technical capabilities required of the contractor; and
 - (ii) the identification of the tender value range based on the estimated tender value where expressions of interest are called for or tenders are advertised and the tendered price where tenders are evaluated; and
- (b) from a date determined by the Minister in the *Gazette*, the recognition status in terms of a best practice contractor recognition scheme in relation to the capabilities of the contractor concerned but if a requirement in terms of this paragraph is set, it must be justifiable in respect of the quality of the procurement .

(4) The solicitation referred to in subregulation (1) must specify the lowest category of registration as contemplated in subregulation (1), and determined in accordance with subregulation (3), required for the construction works contract contemplated in subregulation (1).

(5) Subject to subregulation (1), joint ventures are eligible to submit tender offers or expressions of interest if-

- (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 in the class of construction works under consideration and possesses the required recognition status; and
- (b) the category of registration of the joint venture, determined in accordance with subregulation (6) is equal to or higher than the category of registration specified in accordance with subregulation (3).

(6) The contractor grading designation for a joint venture is determined 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 employable 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.

(7) On receipt of tender offers, the employer must, based on a reasonable derivation from those tender offers, determine the final lowest category of registration required for the evaluation of those offers.

(8) Within the framework of a targeted development programme promoted by a client or employer, that client or employer may accept for evaluation tender offers or expressions of interest by a contractor who is registered as a potentially emerging enterprise in terms of these Regulations at a contractor grading designation, one level higher than the contractor's registered grading designation , if that client or employer-

- (a) is satisfied that such a contractor has the potential to develop and qualify to be registered in that higher grade; and
- (b) ensures that financial, management or other support is provided to that contractor to

enable the contractor to successfully execute that contract.

(9) An employer must, before awarding a construction works contract, satisfy him or herself that the contractor concerned -

- (a) is registered in terms of these Regulations;
- (b) is not prohibited in terms of any legislation from submitting tender offers or expressions of interest to an organ of state; and
- (c) has demonstrated that-
 - (i) he or she has the resource capacity and capability specific to the contract concerned;
 - (ii) his or her capacity to perform the construction works concerned will not be unduly compromised on the award of the contract concerned.

(10) A tender offer received from a contractor that does not satisfy an employer as contemplated in subregulation (7), must be rejected.

Restriction to participate

26. (1) An accounting officer and an accounting authority as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999), who in terms of legislation regulating procurement places a registered contractor or any principals of that contractor under any restriction to participate in public procurement as contemplated in these Regulations, must notify the Board of such restrictions and the reason therefore using an approved form.

(2) The Board must indicate on the register the names of all registered contractors that are suspended from participating in public procurement, the period of such suspension, the reason for such suspension and the name of the organ of state that placed them under such suspension.

PART V LEGAL PROCEDURE AND EVIDENCE

Suspension and deregistration

27. (1) The registration of a contractor who remains in arrears in respect of the payment of his or her annual fees for a period in excess of 90 days despite notification of the fact, must be suspended until those arrears are paid in full or arrangement for such payment has been made with the Board to its satisfaction.

(2) The registration of a contractor who fails to submit an original tax clearance certificate in accordance with regulation 7, or a confirmation of particulars in accordance with regulation 36(2), must be suspended until that original tax clearance certificate or confirmation of particulars has been so submitted.

(3) If a contractor has not rectified his or her failure to comply with these Regulations as contemplated in subregulations (1) or (2) on the date one year after the suspension referred to in subregulation (1), or if the arrangements made in terms of subregulation (1) are not honoured by the contractor concerned, the name of that contractor must be removed from the register of contractors.

- (4) The name of a contractor may be removed from the register of contractors if that contractor-
- (a) has permanently been prohibited from submitting a tender offer to an organ of state in terms of any legislation;
 - (b) has requested the Board in writing to remove his or her name from the register; or
 - (c) has been found guilty of an offence in terms of the Act .

Preliminary investigation of complaint

28. (1) Any person who is aggrieved by an action taken in terms of these Regulations or an omission to take such action, may lodge a complaint with the Board and the Board must appoint an investigating officer to investigate that complaint.

(2) The Board may initiate an investigation in terms of this regulation if the Board is of the opinion that any person has acted contrary to these Regulations or has omitted to act in terms of these Regulations, including the undertaking of construction works in contravention of section 18 of the Act.

(3) An investigating officer must investigate any complaint brought against a person in terms of subregulations (1) or (2), hereafter referred to as "the accused", to determine if reasonable grounds exist to suspect that the accused has committed an act or omitted to act, which may render him or her guilty of any transgression in terms of the Act, except a transgression in terms of regulation 27 or regulation 30.

(4) If the investigating officer is satisfied that reasonable grounds as contemplated in subregulation (3) exist, he or she must –

- (a) investigate the matter; and

- (b) obtain evidence to determine if in his or her opinion any action may be taken against the accused in terms of the Act.

(5) An investigating officer may not question the accused unless he or she informs that accused that he or she —

- (a) has the right to be assisted or represented by another person; and
- (b) is not obliged to make any statement and that any statement so made may be used in evidence against the him or her.

(6) The investigating officer must, after the conclusion of the investigation, submit a report to the Board making his or her recommendations to the Board regarding any matter referred to it in terms of subregulation (1).

Hearing of complaint

29. (1) The Board must after considering a report of the investigating officer in terms of regulation 28(4), act in accordance with the recommendations of the investigating officer if the Board is convinced that sufficient grounds exist for such action.

(2) The Board must notify the accused of the intended investigation by hand or registered mail and that notice must inform the accused—

- (a) of the details and nature of the action or omission by the accused under investigation that may constitute a transgression of the Act and with which the accused is charged;
- (b) that he or she must, in writing, admit or deny responsibility for that action or omission;
- (c) that he or she may, together with the admission or denial, submit a written explanation regarding the action or omission under investigation;
- (d) of the period within which his or her plea in terms of paragraph (b) must be submitted to the Board.

(3) If the notice referred to in subregulation (2) related to a transgression of section 18 of the Act, the Board must serve a copy of that notice on the client or employer with whom the contractor concerned has entered into a contract to perform the construction works concerned.

(4) If an accused admits that he or she is guilty of the transgression, he or she is considered to have acted in transgression of the Act or to have omitted to act in terms of the Act, as the case may be, after he or she has explained his or her action or omission and the Board may act in accordance with subregulation (20).

(5) The acquittal or the conviction of the accused by a court of law on a criminal charge does not bar proceedings against him or her under this regulation even if the facts stated in the notice referred to in subregulation (2), would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge.

(6) The Board must appoint a committee to hear a case if the accused—

- (a) denies the charge; or
- (b) fails to comply with subregulation (2)(b).

- (7) The committee must consist of at least -
- (a) two persons who have expertise in the fields relevant to the investigation; and
 - (b) a person qualified in law, who must act as the chairperson of the committee.
- (8) The committee may, for the purposes of this regulation, appoint a person to assist it in the performance of its functions.
- (9) (a) The committee may, subject to section 29 of the Act, for the purposes of an inquiry, subpoena any person-
- (i) who in its opinion may be able to give material information concerning the subject of the investigation; or
 - (ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the investigation to appear before the committee at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.
- (b) A subpoena issued in terms of paragraph (a), must -
- (i) be in the form as shown in Schedule 4;
 - (ii) be signed by the chairperson of the committee or, in his or her absence, any member of the committee; and
 - (iii) be served on the accused concerned personally or by registered mail.
- (10) The committee may retain a book, document or object produced in terms of subregulation (9) for the duration of the investigation.
- (11) The chairperson of the committee may call upon and administer an oath or take an affirmation from any witness at the inquiry who was subpoenaed in terms of subregulation (9).
- (12) At a hearing the accused -
- (a) (i) may personally be present at the inquiry of the proceedings;
 - (ii) may be assisted or represented by another person in conducting the proceedings;
 - (iii) has the right to be heard;
 - (iv) may call witnesses;
 - (v) may cross-examine any person called as a witness in support of the charge; and
 - (vi) may have access to documents produced in evidence;
 - (b) (i) may admit at any time before conviction that he or she is guilty of the action or omission under investigation despite the fact that he or she denied responsibility or failed to react in terms of subregulation (2)(b);
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of the charge in relation to the action or omission under investigation.
- (13) The accused may during an inquiry -
- (a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;

- (b) question any person who was subpoenaed in terms of subregulation (9); or
 - (c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subregulation (9) suspects or believes to have a bearing on the subject of the inquiry.
- (14) (a) A witness who has been subpoenaed may not -
- (i) without sufficient cause, fail to attend the inquiry at the time and place specified in the subpoena;
 - (ii) refuse to be sworn in or to be affirmed as a witness;
 - (iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or
 - (iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce.
- (b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the committee from further attendance.
 - (c) A witness who has been subpoenaed may request that the names of the members of the committee be made available to him or her.
 - (d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law applies with the necessary changes, to the, examination of, or the production of any book, document or object to the committee, by, any person called in terms of this section as a witness.
 - (e) A witness may not, after having been affirmed as a witness, give a false answer or statement on any matter knowing that answer or statement to be false.
 - (f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object, which he or she is in terms of this regulation, is required to give or produce.
- (15) The record of evidence which has a bearing on the charge before the committee and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if -
- (a) the record is accompanied by a certificate from the chairperson of that commission; and
 - (b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.
- (16) If the action or omission with which the accused is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the accused as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court.

- (17) After the conclusion of the hearing, the committee must, within 30 days -
- (a) decide whether or not the accused is guilty of the transgression charged with;
 - (b) if the committee finds that the accused is guilty of that transgression, take cognizance of any aggravating or mitigating circumstances;
 - (c) inform the accused and the Board of the finding and the reasons for that finding;
 - (d) inform the accused of his or her right to judicial review of the finding in terms of section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (18) An accused found guilty of a transgression in terms of this regulation may -
- (a) address the committee in mitigation of sentence; and
 - (b) call witnesses to give evidence on his or her behalf in mitigation of the finding.
- (19) If the accused is found guilty of the transgression charged with or, or if he or she admits that he or she is guilty of the charge, the committee must inform the Board accordingly and recommend to the Board the appropriate action to be taken.
- (20) The appropriate action to be taken may include-
- (a) where the charge relates to a transgression of section 18(1) of the Act-
 - (i) allowing the contractor in terms of section 18(4) of the Act to complete the construction works concerned;
 - (ii) ordering the removal of the name of a contractor from the register in accordance with section 19 of the Act;
 - (b) issuing a warning to the accused;
 - (c) reprimanding the accused;
 - (d) reporting the accused to the Auditor-General or the Public Protector or both;
 - (e) imposing a fine not exceeding R100 000.00 on the accused; or
 - (f) suspending the accused from participating in public sector procurement for a period of time; and
 - (g) making a cost determination that the accused, the Board or the party who initiated the investigation, must defray all or part of the costs incurred to conduct the investigation.
- (21) The Board must publish the details of the finding in the *Gazette* and if applicable, update the register of contractors accordingly.

Offences

30. (1) Any person or organ of state who-
- (a) supplies the Board with false information to mislead the Board;
 - (b) fails to register a project in terms these Regulations;
 - (c) award a construction works contract contrary to these Regulations; or
 - (d) fails to comply with these Regulations,
- is guilty of an offence and is liable to a fine not exceeding R100 000.00.

(2) In the case of a person or an organ of state being found guilty in terms of this regulation, the particulars of the finding and the sentence must be published by the Board by notice in the *Gazette*, and in the case of an organ of state, the Court concerned must submit the particulars of its finding to the Auditor-General.

(3) The Board must, if any activity contemplated in the Prevention and Combating of Corrupt Activities Act, 2004, comes to their attention, report such activity to a police official as contemplated in that Act.

Copies of notices to be retained and presumptions

31. (1) The Board must retain a copy of every notice served on a person in terms of these regulations and such copy shall serve as *prima facie* evidence that the notice concerned has been duly served by the Board.

(2) A copy of a notice served by hand on an unregistered contractor in terms of section 18 of the Act, is *prima facie* evidence that the contractor concerned has acknowledged receipt of that notice.

Copies of entry into registers to be evidence

32. (1) A document purporting to be an extract from, or copy of, any register or record kept in terms of the Act and purporting to be certified as a true extract or copy by a person stating that he or she has the custody or control of such register or record, shall in any court be admissible as evidence and be *prima facie* evidence of the facts stated therein without the production of the original register or record or any certificate, licence, other document, microfiche, microfilm or computerised record from or of which such extract or copy was made.

(2) The information contained in a register or record kept for the purposes of the Act shall subject to the Promotion of Access to information Act, 2000, (Act No. 2 of 2000) be furnished -

- (a) to any client who has registered a project in terms of these regulations;
- (c) to any organ of state; or
- (e) subject to the prior consent of the Minister or any person authorised thereto by the Minister, to a competent authority of another country.

Cognisance may be taken of information contained in register or record

33. The Minister, the Board or any other competent authority may, in exercising a discretion or taking a decision in terms of the Act, take cognisance of any information contained in a register or record contemplated in the Act or kept by the Board.

Access to information

34. (1) The information contained in a register or record kept for the purposes of the Act must, subject to the Promotion of Access to Information Act, 2000, be furnished -

- (a) to any client or employer who has registered a project in terms of these Regulations in relation to that project;
- (b) to any organ of state.

(2) The following information contained in the registers contemplated in these Regulations, must be publicly available:

- (a) identification particulars of a contractor;
- (b) the category of registration of a contractor; and
- (c) the disciplinary history of a contractor or a principal of that contractor.

PART VI

GENERAL

Determinations in relation to fees

35. (1) If the registration of a contractor is cancelled during the period of validity of that registration for any other reason than following a decision in terms of sections 19 or 29 of the Act, that contractor is entitled to be refunded *pro rata* to the period that the contractor is not registered any more.

(2) A contractor must pay the annual fee referred to in section 16(8) of the Act and as shown in Schedule 2, in relation to the highest contractor grading designation in relation to which that contractor is registered, on the date of registration and during the two years following, on the date of anniversary of registration.

(3) An administration fee referred to in regulation 7 must be paid in relation to each class of works applied for.

(4) If an amendment to the category status of a contractor is applied for in terms of section 17(2) of the Act, the contractor so applying is, subject to subregulation (2), required to pay the annual fee in relation to the new contractor grading designation *pro rata* to the remaining period of his, her or its registration and in the case of an amendment of the category status to a lower contractor grading designation, that contractor is not entitled to a *pro rata* refund of the annual fee that he or she has already paid.

(5) The Board must, on receipt of any fees in terms of these Regulations, issue a receipt to the person who paid those fees, subject thereto that a registration certificate issued in terms of these Regulations is deemed to be a receipt in terms of this subregulation.

Change of particulars

36. (1) A contractor or organ of state must, if any particulars with regard to the relevant registration in terms of these Regulations changes, notify the Board accordingly.

(2) A contractor must on the date referred to in regulation 35(2), confirm his or particulars on the approved form.

Approved forms

37. Approved forms in relation to these Regulations may be obtained from the Board and submitted to the Board at the following addresses:

<http://www.cidbregisters.org.za>;

Telephone Number: 0860 103 353

Fax Number: +27 12 481 9086; or

Blocks N & R, SABS Campus

Leyds Street Entrance,

Groenkloof

Pretoria

GAUTENG

Transitional measures

38. (1) Despite anything to the contrary contained in these Regulations a contractor who has been registered as such during the pilot project undertaken by the Board during the period immediately preceding the implementation of these Regulations, is exempt from the payment of the first administration fee that the contractor concerned is liable to pay.

(2) If an invitation to tender or submit expressions of interest has been issued by an organ of state before the date of commencement of these Regulations for that organ of state or the date determined by the Minister in terms of section 16 of the Act, that organ of state may award that tender or manage that tender process in accordance with the legislation or other requirements that applied to the organ of state at the time of publication of that invitation to tender or to submit expressions of interest, but-

- (a) the contractor to whom the contract has been awarded or who have been declared eligible to submit tender offers, must within 30 days after having been awarded the contract or notified of the eligibility to submit tender offers, apply for registration in terms of these Regulations; and
- (b) the employer concerned, must, within 30 days from the dates contemplated in paragraph (a) apply for the registration of the project concerned in terms of these Regulations.

(3) For the purpose of the contract contemplated in subregulation (2), the contractor grading designation of a contractor is deemed to be at the level that is required for that contract.

Short title and commencement

39. (1) These regulations are called the Construction Industry Development Regulations, 2004, and come into effect for a client and an employer and the contractors who enter into construction works contracts with those clients or employers on the date determined by the Minister by notice in the Gazette.

(2) Different dates may so be determined for different clients or employers or groups of clients or employers and different contractors or groups of contractors and for different Parts or regulations.

SCHEDULE 1

Certificate Number: _____

Certificate of Contractor Registration*This is to certify that*_____
Contractor's Name

has, in terms of Chapter Three of the Construction Industry Development Board Act, 2000, (Act NO. 38 of 2000), been registered in the category

*Category of registration*_____
*CIDB Contractor Registration Number*_____
*Registration Date*_____
*Class of Works*_____
*Annual Update of Particulars*_____
Maximum Contract Value

The continued registration of this contractor is subject to an annual update of particulars

Chief Executive Officer

SCHEDULE 2**FEEs****Table 1: Registration and Renewal Fees**

Item	Fee in ZAR	Empowering section of the Act
1. Administration Fee in relation to contractor grading designations 1 and 2;	250.00	Section 16(6)
2. Administration Fee in relation to contractor grading designations 3-9	750.00	Section 16(6)
3. Renewal fee in relation to contractor registration for contractor grading designations 1 and 2	250.00	Section 20(2)
4. Renewal fee in relation to contractor registration for contractor grading designations 3-9	750.00	Section 20(2)
5. Project Registration Fee	750.00	Section 22(4)

Table 2: Annual Fees Payable in Respect of the Highest Contractor Grading Designation

Contractor grading designation	Fee in ZAR	Empowering section of the Act
1(class of construction works)	200	Section 16(8)
2(class of construction works)	250	Section 16(8)
3(class of construction works)	300	Section 16(8)
4(class of construction works)	800	Section 16(8)
5(class of construction works)	1500	Section 16(8)
6(class of construction works)	3000	Section 16(8)
7(class of construction works)	8000	Section 16(8)
8(Class of construction works)	25000	Section 16(8)
9(class of construction works)	40000	Section 16(8)

SCHEDULE 3

CLASSES OF CONSTRUCTION WORKS

Description	Designation	Definition	Basic works types	Examples
Civil engineering works	CE	Construction works that are primarily concerned with the materials such as steel, concrete, earth and rock and their application in the construction, operation, maintenance and management of hydraulic, structural, environmental and systems aspects of infrastructure works and services.	Water, sewerage, transport, urban development and municipal services	<p>Airports and runways Bridges, culverts and canals Concrete dams Cooling towers Earth and rock fill dams Earthworks, roads and storm water drainage Elevated reinforced concrete towers Freeways Fuel installations Grand stands Headgears Irrigation Marine works including dredging works Pump stations and pipelines</p> <p>Railways and sidings Security fences Sewerage, reticulation and pump stations Silos Solid waste disposal sites Sporting facilities Swimming pools Township services (water, sewer, roads and storm water), Tunnels and underground works Wastewater and sewerage treatment Water retaining structures Water reticulation and treatment</p>
Electrical engineering works	EE	Construction works that are primarily concerned with installation, testing, operation and maintenance of equipment, plant and systems within the electrical, electronic, communication and electrical systems areas.	Electrical power generation, transmission, distribution and utilisation, communications networks, and electronic plant and equipment and systems.	<p>Electrical distribution systems and reticulations Electrical installations in buildings Intercommunication systems Power generation Radio, telemetry and Scada</p> <p>Standby plant and uninterrupted power supply Street and area lighting Substations and protection systems Transmission Lines</p>
General building works	GB	Construction works that: a) are primarily concerned with the provision of permanent shelter for its occupants or contents; or b) cannot be categorised in terms of the definitions provided for civil engineering works, electrical engineering works, mechanical engineering works, or	Buildings and ancillary works other than those categorised as being: a) civil engineering works; b) electrical engineering works; c) mechanical engineering works; or d) specialist works.	<p>Airport control towers Aquariums Auditoriums, opera houses, concert halls Civic centres, city and town halls and theatres Communications, radio and television, computer buildings, Conference centres Conservatories Defence facilities Domestic facilities / dwelling units Educational facilities Fencing High rise buildings</p> <p>Hospitals / Clinics Justice buildings Industrial buildings, aircraft hangers, barracks, sheds, warehouses Laboratories Low rise buildings Mortuaries Museums, monuments and memorials Police Stations Prison complexes Recreational and leisure facilities Refurbish / renovate buildings</p>

Description	Designation	Definition	Basic works types	Examples
		specialist works.		Security facilities Workshops
Mechanical engineering works	ME	Construction works that are primarily concerned with the installation, testing, operation and maintenance of machines, machine and thermodynamic processes and manufacturing, materials handling plants and systems.	Machine systems including those relating to the environment of building interiors.	Air-conditioning and mechanical ventilation Boiler installations and steam distribution Central heating Centralised hot water generation Compressed air, gas and vacuum installations Conveyor and materials handling installations
Specialist works	SA	A subset of construction works identified and defined by the Board that involves specialist capabilities for its execution	Alarms, security and access control systems	
	SB		Asphalt works (supply and lay)	
	SC		Building excavations, shaft sinking and lateral earth support	
	SD		Corrosion protection (cathodic, anodic and electrolytic)	
	SE		Demolition and blasting	
	SF		Fire prevention and protection systems	
	SG		Glazing, curtain walls and shop fronts	
	SH		Landscaping, irrigation and horticultural works	
	SI		Lifts, escalators and travellers (installation, commissioning and maintenance)	
	SJ		Piling and specialized foundations for buildings and structures	
	SK		Road markings and signage	
	SL		Structural steelwork fabrication and erection	
	SM		Timber buildings and structures	
	SN		Waterproofing of basements, roofs and walls using specialist systems.	
	SO		Water supply and drainage for buildings (wet services, plumbing)	
	SP		Building of Homes as contemplated in the Housing Consumer Protection Measures Act (Act No 95 of 1998)	

SUBPOENA



SUBPOENA

In terms of section 29 of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000)

Person's Name

is hereby ordered to

(a) Appear at an inquiry on _____ (Insert date)
 at _____ (Insert
 Address) in relation to (Insert details of
 inquiry) _____

(i) to answer to the charge referred to above

(ii) to witness in relation to the inquiry referred to above

(iii) Produce the following documentation or object in relation

to _____

(Insert details of inquiry) before or

on _____ (Insert date)

at _____
 _____ (insert address)

*Chairperson: Committee appointed in terms of
 regulation 29 of the Construction Industry
 Development Regulations, 2004*

BOARD NOTICES

NOTICE 62 OF 2004

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000 (ACT 38 OF 2000)

STANDARD FOR UNIFORMITY IN CONSTRUCTION PROCUREMENT

The Standard for Uniformity in Construction Procurement contained in the Schedule is published in terms of 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.

Compliance with this standard is mandatory for organs of state who solicit tenders offers in the construction industry.

Uniformity in construction procurement documentation, procedures and practices is essential to improved industry performance and improved value to clients. It engenders a culture of consistency and predictability within the procurement process.

This standard establishes minimum requirements for uniformity in construction procurement and is based on Construction Procurement Best Practices published by the Board.

.....
BRIAN CAMERON BRUCE
CHAIRPERSON: CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

Schedule

STANDARD FOR UNIFORMITY IN CONSTRUCTION PROCUREMENT

1 Scope

This standard establishes requirements for procurement within the construction industry which are aimed at bringing about standardisation and uniformity in construction procurement documentation, practices and procedures.

- Note:** 1 Annex A identifies documents which provide guidance on how to comply with the various requirements of this standard.
2 CIDB Best Practice Guideline A2 (1002), *Applying the procurement prescripts of the CIDB in the Public Sector*, provides guidance on the application of the CIDB's Standard for Uniformity in Construction Procurement alongside other legislative provisions for procurement.

2 Normative references

The following referenced documents are indispensable for the application of this standard: For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

- 2.1 Conditions of Contract for Construction for Building and Engineering Works designed by the Employer ("Red Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC).
- 2.2 Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Plant and for Building and Engineering Works, designed by the Contractor ("Yellow Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC).
- 2.3 Conditions of Contract for EPC Turnkey Projects ("Silver Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC).
- 2.4 Contract for the Supply and Delivery of Goods as published by the Construction Industry Development Board (1019).
- 2.5 General Conditions of Contract for Construction Works (2004) as published by the South African Institution of Civil Engineering.
- 2.6 General conditions of purchase as published by the Construction Industry Development Board (1018).
- 2.7 JBCC series 2000 Principal Building Agreement as published by the Joint Building Contracts Committee.
- 2.8 JBCC series 2000 Minor Works Agreement as published by the Joint Building Contracts Committee.
- 2.9 NEC Engineering and Construction Short Contract 1st Edition 1999 (ECSC1) as published by the Institution of Civil Engineers.
- 2.10 NEC Engineering and Construction 2nd Edition 1995 (ECC2) as published by the Institution of Civil Engineers.

- 2.11 NEC Professional Services Contract 2nd Edition June 1998 (PSC2) as published by the Institution of Civil Engineers.
- 2.12 NEC Term services contract (1st Edition) as published by the Institution of Civil Engineers
- 2.13 Short Form of Contract ("Green Book") (1999) as published by the International Federation of Consulting Engineers (FIDIC).
- 2.14 Standard Professional Services Contract as published by the Construction Industry Development Board (1015).
- 2.15 Supply of Goods (Short Contract) as published by the Construction Industry Development Board (1020).
- 2.16 The Supply Contract as published by the Construction Industry Development Board (1021).

3 Definitions

For the purposes of this standard the definitions given in the Construction Industry Development Board Act, 2000 (Act 38 of 2000) and the Construction Industry Development Regulations issued in terms of section 33 of the Construction Industry Development Board Act, 2000 (Act 38 of 2000) (some of which are repeated for convenience) and the following definitions apply:

- 3.1 **construction procurement** means procurement in the construction industry, including the invitation, award and management of contracts;
- 3.2 **construction industry** means the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment;
- 3.3 **contract data** means the document that states the applicable conditions of contract and associated contract-specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract;
- 3.4 **emerging enterprise** means an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid;
- 3.5 **engineering and construction works contract** means a contract for the provision of a combination of supplies and services, arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of structures, including building and engineering infrastructures;
- 3.6 **form of offer and acceptance** means the documents that formalize the legal process of offer and acceptance;
- 3.7 **list of returnable documents** means the document that lists everything the employer requires a tenderer to submit with his tender submission;

- 3.8 pricing instructions** means the document that provides the criteria and assumptions which it will be assumed in the contract, that the tenderer has taken into account when developing his prices, or target, in the case of target cost contracts;
- 3.9 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;
- 3.10 services contract** means the contract for the provision of labour or work, including knowledge-based expertise, carried out by hand, or with the assistance of equipment and plant;
- 3.11 scope of work** means the document that specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed;
- 3.12 site information** means the document that describes the site as at the time of tender, to enable the tenderer to price his tender and to decide upon his method of working and programming;
- 3.13 supplies contract** means a contract for the provision of materials or commodities made available for purchase;
- 3.14 tender data** means the document that establishes the tenderer's obligations in submitting a tender and the employer's undertakings in administering the tender process and evaluating tender offers;
- 3.15 tender notice and invitation to tender** means the document that alerts prospective contractors to the nature of the supplies, services and engineering and construction works required by the employer and contains sufficient information to solicit a response. In this context "tender" is synonymous with "bid" stated in Treasury supply chain management guidelines;
- 3.16 threshold** means a monetary value of a procurement contract established in any legislation governing procurement or by the executive of an institution, below which a procedure may be used.

4 Requirements

4.1 General

Construction procurement shall be undertaken in accordance with:

- a) the provisions of legislation regulating procurement; and
- b) the CIDB Code of Conduct for all parties engaged in Construction Procurement published in terms of section 5(4) of the Construction Industry Development Board Act.

4.2 Solicitation of tender offers

- 4.2.1** Tender offers shall be solicited using one of the standard procurement procedures and tender evaluation methods described in Tables 1 and 2, respectively.

Table 1: Standard Procurement Procedures

Procedure	Description
P1 Negotiated procedure	Tender offers are solicited from a single tenderer.
P2 Nominated procedure	Tenderers that satisfy prescribed criteria are admitted to an electronic data base. Tenderers are invited to submit tender offers based on search criteria and their position on the data base. Tenderers are repositioned on the data base upon appointment or upon the submission of a tender offer.
P3 Open procedure	Tenderers may submit tender offers in response to an advertisement by the organization to do so.
P4 Qualified procedure	A call for expressions of interest is advertised and thereafter only those tenderers who have expressed interest, satisfy objective criteria and who are selected to submit tender offers, are invited to do so.
P5 Quotation procedure	Tender offers are solicited from not less than three tenders in any manner the organization chooses, subject to the procedures being fair, equitable, transparent, competitive and cost-effective.
P6 Proposal procedure using the two-envelope system	Tenderers submit technical and financial proposals in two envelopes. The financial proposal is only opened should the technical proposal be found to be acceptable.
P7 Proposal procedure using the two-stage system	Non-financial proposal are called for. Tender offers are then invited from those tenderers that submit acceptable proposals based on revised procurement documents. Alternatively, a contract is negotiated with the tenderer scoring the highest number of evaluation points.
P8 Shopping procedure	Written or verbal offers are solicited in respect of readily available supplies obtained from three sources. The supplies are purchased from the source providing the lowest price once it is confirmed in writing.

Table 2: Standard Tender Evaluation Methods

Method	Description
Method 1: Financial offer	1) Rank tender offers from the most favourable to the least favourable comparative offer. 2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	1) Score tender evaluation points for financial offer. 2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing. 4) Calculate total tender evaluation points. 5) Rank tender offers from the highest number of tender evaluation points to the lowest. 6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Note: 1 SANS 294, *Construction Procurement Processes, Procedures and Methods* provides guidelines for the procedures contained in Tables 1 and 2.

- 2 CIDB Best Practice Guideline A3 (1003), *Evaluating tender offers*, provides comprehensive guidance on the evaluation of tender offers and contains proforma forms to evaluate tender offers and an example of a tender evaluation report.

4.2.2 As a general rule, engineering and construction works, supplies and services other than professional services shall be solicited using a standard method in accordance with the provisions of Table 3.

Table 3: Standard methods for procuring different categories of construction contracts

Category of contract	Type of procurement	Standard Procurement Procedure and Evaluation Method*
Engineering and construction works	Design by employer (normal)**	P3 Open Procedure with Method 1 or Method 2
	Design and build** / develop and construct**	P6 Proposal procedure using two-stage system with Method 1, 2, 3 or 4; P4 Qualified Procedure with Method 1 or 2 and eligibility criteria framed around the attainment of a minimum quality score or requirements; or P4 Qualified Procedure with Method 3 or 4
	Management contractor**/ Construction Management**	
	Works which require exceptional quality or where it is desirable to invite a limited number of tenders who are of a similar capability and size	
	Very low value works	P1 Negotiated Procedure with Method 1
	Value below a threshold	P5 Quotation Procedure with Method 1 or 2
	The works are largely identical to works previously executed and it is not in the organization's interest to solicit other offers or cannot be technically or economically separated from a previous contract	P1 Negotiated Procedure with Method 1
Supplies	Simple works designed by the employer where the value of the contract, inclusive of Value Added Tax is not more than R 250 000.	P2 Nominated Procedure with Method 1 or Method 2
	Very low value below a threshold for the purchase of readily available supplies	P8 Shopping Procedure with Method 1
	Value below a threshold	P5 Quotation Procedure with Method 1 or 2
	Normal	P3 Open Procedure with Method 1 or 2
	Supplies which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	P4 Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one supplier has the required product or the supplies cannot be separated from a previous contract	P1 Negotiated Procedure with Method 1
	Relatively low value supplies which are readily available and which are frequently required where the value of the contract, inclusive of Value Added Tax is not more than R 100 000.	P2 Nominated Procedure with Method 1 or Method 2
Services other than professional services	Value below a threshold	P5 Quotation Procedure with Method 1 or 2
	Normal	P3 Open Procedure with Method 1 or 2
	Services which require exceptional quality or where it is desirable to invite a limited number of tenderers who are of a similar capability and size	P4 Qualified Procedure with Method 1 or 2 and eligibility criteria framed around minimum quality requirements.
	Only one service provider has the required product or the supplies cannot be separated from another previous contract	P1 Negotiated Procedure with Method 1
	Relatively low value services which are readily available and which are frequently required where the value of the contract, inclusive of Value Added Tax is not more than R 250 000.	P2 Nominated Procedure with Method 1 or Method 2

* Refer to Table 1 for descriptions of Procedures and Table 2 for descriptions of Methods.

** This contracting strategy is fully described in the SAICE Practice Manual 2, *Delivering construction projects using the design by employer contracting strategy* and the CIDB Best Practice Guideline A5 (1005), *Managing Construction Procurement Risks*.

4.2.3 Professional services in construction shall be solicited using a standard method in accordance with the provisions of Table 4.

Table 4: Standard methods for procuring professional services

Type of procurement	Standard Procurement Procedure and Evaluation Method*
In most cases, except in the case of complex or highly specialised assignments or those that invite innovations on the basis of quality alone.	P2 Nominated, P3 Open, P4 Qualified or P5 Quotation Procedures or the P6 Proposal Procedure using the two envelope system with either: <ul style="list-style-type: none"> • Methods 3 or 4; or • Methods 1 and 2 with eligibility criteria framed around the attainment of a minimum quality score or quality related requirements
A complex or highly specialised assignment, for which it is difficult to define the precise scope of work and tenderers are expected to demonstrate innovation in their proposals or An assignment that has a high downstream impact and requires the best available experts or An assignment could be carried out in substantially different ways, hence proposals will not be comparable.	P6 Proposal Procedure using the two envelope system with either Method 3 or 4; P7 Proposal Procedure using the two stage tendering system with Method 1 or 2 and eligibility criteria framed around the rejection of unacceptable proposals and quality related requirements; or P7 Proposal Procedure using the two stage tendering system with Method 3 or 4 with weighting for price equal to zero.
A standard or routine assignment where well established practices and standards exist and in which the contract amount is small.	P6 Proposal Procedure using the two envelope system with Method 1 or 2 and eligibility criteria framed around minimum quality related requirements
An assignment that represents a natural continuation of previous work carried out by the firm. A rapid selection is essential (eg in an emergency operation). A very small assignment. An assignment where only one firm is qualified or has the experience of exceptional worth for the assignment.	P1 Negotiated Procedure with Method 1
Value below a threshold	P5 Quotation Procedure with Method 1 or Method 2
A relatively small assignment which does not justify the preparation and evaluation of competitive proposals where the value of the contract, inclusive of Value Added Tax is not more than R 250 000.	P2 Nominated Procedure with Method 1 or Method 2.
A simple assignment which is precisely defined and the budget fixed.	P6 Proposal Procedure using the two envelope system with Method 1 and 2 and eligibility criteria framed around minimum quality related requirements

* Refer to Table 1 for descriptions of Procurement Procedures and Table 2 for descriptions of Tender Evaluation Methods.

4.3 Quality (functionality)

The manner in which quality is to be ensured in the work shall be incorporated in procurement documents using one of more of the following methods:

- the full and unambiguous specification of requirements in the scope of work;
- taking cognizance of whole-life costing in the financial evaluation of tender offers;
- where exceptional quality is required, making use of the qualified procurement procedure and ensuring that respondents who are invited to submit tender offers are suitably qualified to do so;
- requiring tenderers to submit plans for monitoring and applying quality management principles in the performance of their contracts;
- introducing quality into the eligibility criteria;

- f) establishing a category of preference for quality in the evaluation of tenders; or
 g) evaluating selected quality criteria as an integral part of the tender offer.

Note: Further guidance on the incorporation of quality in procurement documents may be found in SANS 294, *Construction procurement processes, procedures and methods* and CIDB Best Practice Guideline A4, *Evaluating Quality in Tender Submissions* (1004).

4.4 Procurement documents

Note: Comprehensive guidance on the preparation of procurement documents in accordance with the provisions of this clause may be found in the following publications:

- CIDB Best Practice Guideline A5 (1005), *Managing Construction Procurement Risks*
- CIDB Best Practice Guideline C1 (1009), *Preparing Procurement Documents*;
- SANS 294, *Construction Procurement Processes, Procedures and Methods*
- SANS 10403, *Formatting and Compilation of Construction Procurement Documents*;
- SAICE Practice Manual 1, *The use of South African National Standards in Construction Procurement*;

4.4.1 General

4.4.1.1 Construction procurement documents for engineering and construction works, services and supplies shall be formatted and compiled under the headings contained in Tables 5 where a three volume approach is adopted or Table 6 where a single volume approach is adopted.

Table 5: Standard headings and sequencing of documents when soliciting tenders where a three volume approach is adopted

Volume	Contents	
	Number	Heading
Volume 1	Part 1: Tendering procedures	
	T1.1	Tender Notice and Invitation to Tender
	T1.2	Tender Data
Volume 2	Part 2: Returnable documents	
	T2.1	List of Returnable Documents
	C1.1	Form of Offer and Acceptance
	C1.2	Contract Data (Part 2: Data provided by the contractor)
	C2.2	Activity Schedule or Bill of Quantities
	T2.2	Returnable Schedules
Volume 3	Part 1: Agreement and Contract Data	
	C1.2	Contract Data (Part 1: Data provided by the employer)
	Part 2: Pricing data	
	C2.1	Pricing Instructions
	Part 3: Scope of Work	
	C3	Scope of Work
	Part 4: Site information (engineering and construction works contracts only)	
	C4	Site Information

Table 6: Standard headings and sequencing of documents when soliciting tenders where a single volume approach is adopted

Contents	
Number	Heading
Part 1: Tendering procedures	
T1.1	Tender Notice and Invitation to Tender
T1.2	Tender Data
Part 2: Returnable documents	
T2.1	List of Returnable Documents
T2.2	Returnable Schedules
Part 1: Agreement and Contract Data	
C1.1	Form of Acceptance
C1.2	Contract Data
Part 2: Pricing data	
C2.1	Pricing Instructions
C2.2	Activity Schedule or Bill of Quantities
Part 3: Scope of Work	
C3	Scope of Work
Part 4: Site information (engineering and construction works contracts only)	
C4	Site Information

4.4.1.2 The contract arising from the solicitation of tender offers using a three volume approach or the Negotiated Procedure shall be formatted and compiled under the headings contained in Table 7.

Table 7: Standard headings and sequencing of documents in the contract

Contents	
Number	Heading
Part 1: Agreements and contract data	
C1.1	Form of Offer and Acceptance
C1.2	Contract Data
Part 2: Pricing data	
C2.1	Pricing Instructions
C2.2	Activity Schedule or Bill of Quantities
Part 3: Scope of Work	
C3	Scope of Work
Part 4: Site information (engineering and construction works contracts only)	
C4	Site Information

4.4.1.2 The Notice and Invitation to Tender shall, as a minimum, contain the wording provided in Annex B.

4.4.1.3 The Form of Offer and Acceptance with a schedule of deviations provided in Annex C shall be used with minimal contract specific amendments to form the basis of agreements arising from the solicitation of tender offers.

4.4.2 Preferencing schedules

Preferencing schedules relating to the targeting of enterprises and targeted labour shall not differ substantially from the samples provided in Annexes D and E. These returnable schedules shall, if applicable to the contract, be incorporated in the scope of work when the contract is compiled where a three volume approach in the solicitation of tender offers is adopted.

Note: The following documents provide comprehensive guidance on implementing preferential procurement policies:

- CIDB Best Practice Guideline B1 (1007), *Formulating and Implementing Preferential Procurement Policies*
- CIDB Best Practice Guideline B2 (1008), *Methods and Procedures for Implementing Preferential Procurement Policies*
- CIDB Best Practice Guideline D2 (1013), *Joint Venture Arrangements*
- SANS 294, *Construction procurement processes, methods and procedures*.
- SAICE Practice Manual 1, *The use of South African National Standards in Construction Procurement*

4.4.3 Tender Data

4.4.3.1 The Tender Data shall reference the Standard Conditions of Tender contained in Annex F.

Note: Annex E of SANS 294, *Construction Procurement Processes, Procedures and Methods*, provides comprehensive guidance on the compilation of Tender Data.

4.4.3.2 The Tender Data in all contracts other than engineering and construction works contracts where the register of contractors is applied shall include the following:

Clause number (refer to Annex F)	
F.2.23	The tenderer is required to submit with his tender an original valid Tax Clearance Certificate issued by the South African Revenue Services.

4.4.3.3 The tender offer validity period provided for in the Tender Data shall not exceed eight weeks.

4.4.3.4 The Tender Data associated with a Standard Tender Evaluation Method shall reference the method to be used and contain at least the following wording:

Method 1: Financial offer

Clause number (refer to Annex F)	
F.3.11	The procedure for the evaluation of responsive tenders is Method 1

Method 2: Financial offer and preferences

Clause number (refer to Annex F)	
F.3.11	The procedure for the evaluation of responsive tenders is Method 2 The financial offer will be scored using Formula 1 / 2* (option 1) where the value of W_1 is 80 / 90**

* Delete reference to formula that is not applicable

** Delete inappropriate value in accordance with the Regulations issued in terms of the Preferential Procurement Policy Framework Act.

Method 3: Financial offer and quality

Clause number (refer to Annex F)	
F.3.11	<p>The procedure for the evaluation of responsive tenders is Method 3</p> <p>The score for quality is to be calculated using the following formula:</p> $W_Q = W_2 \times S_0 / M_S$ <p>where W_2 is the percentage score given to quality and equals ____* S_0 is the score for quality allocated to the submission under consideration M_S is the maximum possible score for quality in respect of a submission</p> <p>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 ____*:</p>

* Delete reference to formula and option that is not applicable

** Insert value such that $W_1 + W_2 = 100$

Method 4: Financial offer, quality and preferences

Clause number (refer to Annex F)	
F.3.11	<p>The procedure for the evaluation of responsive tenders is Method 4</p> <p>The score for quality is to be calculated using the following formula:</p> $W_Q = W_2 \times S_0 / M_S$ <p>where W_2 is the percentage score given to quality and equals ____* S_0 is the score for quality allocated to the submission under consideration M_S is the maximum possible score for quality in respect of a submission</p> <p>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 ____*:</p> <p>The score for quality and financial offer is to be combined, before the addition of the score for preference, as follows:</p> $W_C = W_3 \times \left(1 + \frac{(S - S_m)}{S_m}\right)$ <p>Where W_3 is the number of tender evaluation points for quality and financial offer and equals 80 / 90** S is the sum of score for quality and financial offer of the submission under consideration S_m is sum of the score for quality and financial offer of the submission scoring the highest number of points</p>

* Insert values such that $W_1 + W_2 = 100$

** Delete inappropriate value in accordance with the Regulations issued in terms of the Preferential Procurement Policy Framework Act.

4.4.4 Contract data

4.4.4.1 The contract data in respect of prime or main contracts must reference one of the following standard industry forms of contract unless the publishers of such forms of contract indicate that such a form of contract is not suited for the intended application:

- a) engineering and construction works contract;
 - i) General Conditions of Contract for Construction Works;
 - ii) Conditions of Contract for Construction, Conditions of Contract for Plant and Design-Build, Conditions of Contract for FIDIC EPC/Turnkey Projects or Short Form of Contract;
 - iii) JBCC series 2000 Principal Building Agreement or Minor Works Agreement; or
 - iv) NEC Engineering and Construction Short Contract NEC Engineering and Construction Contract.
- b) services contract (professional);
 - i) CIDB Standard Professional Services Contract; or
 - ii) NEC Professional Services Contract.
- c) services contract (facilities);
 - i) NEC Term Services Contract
- d) supplies contract;
 - i) CIDB General conditions of purchase;
 - ii) CIDB Supply of Goods (Short Contract);
 - iii) CIDB Contract for the Supply and Delivery of Goods; or
 - iv) CIDB The Supply Contract.

Note: 1 Guidance on the selection of an appropriate form of contract is provided in CIDB Best Practice Guideline C1 (1009), *Preparing Procurement Documents*, and CIDB Best Practice Guideline C2 (1010), *Choosing an appropriate Form of Contract for Engineering and Construction Works*.

2 The CIDB Best Practice Guideline C3 (1011), *Adjudication*, provides guidance on how adjudication should be dealt with in Contract Data.

3 The SAICE Practice Manual 2, *Delivering construction projects using the design by employer contracting strategy*, provides information on the administration of design by employer contracts in accordance with the provisions of the GCC, JBCC, FIDIC and NEC forms of contract.

4.4.4.2 The standard industry forms of contract listed in 4.4.4.1 shall be used with minimal project specific variations and additions which do not change their intended usage.

4.4.4.3 Guarantees of an insurance company or bank required in engineering and construction contracts shall not substantially differ from the sample provided in Annex G. Such guarantee shall not normally exceed 10% of the contract price and in no case exceed 12,5%.

4.4.4.4 Retention monies that are held shall not exceed 10,0% of any amount due to a contractor. Where guarantees of an insurance company or bank that are provided are equal to or greater than 10% of the contract price, the total amount of retention monies held shall not exceed 5% of the contract price.

4.4.5 Submission Data

4.4.5.1 The Submission Data shall reference the Standard Conditions for the Calling for Expressions of Interest contained in Annex H.

Note: Annex G of SANS 294, *Construction Procurement Processes, Procedures and Methods*, provides comprehensive guidance on the compilation of Submission Data where the Standard Conditions for the Calling for Expressions of Interest are adopted.

4.4.5.2 The Submission Data in all contracts other than engineering and construction works contracts where the register of contractors is applied, may include the following:

Clause number (refer to Annex H)	
H.2.11	The respondent is required to submit with his expression of interest an original valid Tax Clearance Certificate issued by the South African Revenue Services.

4.4.6 Subcontracting arrangements

Where it is desirable that an employer and a contractor jointly select a subcontractor, the manner in which this is to be done shall be described in the Scope of Work in accordance with the provisions of Annex I.

Note: The CIDB Best Practice Guideline D1 (1012), *Subcontracting Arrangements*, provides guidance on the selection of a suitable forms of subcontracts.

4.5 Applying the CIDB register of contractors to public contracts

Note: CIDB Best Practice Guideline A6 (1006), *Applying the Registers to Construction Procurement*, provides comprehensive guidance to employers and their agents to comply with the requirements of the Construction Industry Development Regulations in respect of the register of contractors and the register of projects.

4.5.1 Contractor grading designations shall 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 8 and the next two characters are capital letters representing the designation for the class of construction works shown in column 2 of Table 9.

Table 8: Contractor grading designations and associated parameters

Contractor Grading Designation	Tender Value Range designation	Range of Tender Values	
		Greater than	Less than or equal to
1(class of construction works)	1	R 0	R 100 000
2(class of construction works)	2	R 100 000	R 300 000
3(class of construction works)	3	R 300 000	R 1 000 000
4(class of construction works)	4	R 1 000 000	R 3 000 000
5(class of construction works)	5	R 3 000 000	R 5 000 000
6(class of construction works)	6	R 5 000 000	R 10 000 000
7(class of construction works)	7	R 10 000 000	R 30 000 000
8(class of construction works)	8	R 30 000 000	R 100 000 000
9(class of construction works)	9	R 100 000 000	No limit

Table 9: Classes of construction work

Description	Designation	Definition
Civil engineering works	CE	Construction works that are primarily concerned with the materials such as steel, concrete, earth and rock and their application in the construction, operation, maintenance and management of hydraulic, structural, environmental and systems aspects of infrastructure works and services.
Electrical engineering works	EE	Construction works that are primarily concerned with installation, testing, operation and maintenance of equipment, plant and systems within the electrical, electronic, communication and electrical systems areas.
General building works	GB	Construction works that: a) are primarily concerned with the provision of permanent shelter for its occupants or contents; or b) cannot be categorised in terms of the definitions provided for civil engineering works, electrical engineering works, mechanical engineering works, or specialist works.
Mechanical engineering works	ME	Construction works that are primarily concerned with the installation, testing, operation and maintenance of machines, machine and thermodynamic processes and manufacturing, materials handling plants and systems.
Specialist works	SA	Alarms, security and access control systems
	SB	Asphalt works (supply and lay)
	SC	Building excavations, shaft sinking and lateral earth support
	SD	Corrosion protection (cathodic, anodic and electrolytic)
	SE	Demolition and blasting
	SF	Fire prevention and protection systems
	SG	Glazing, curtain walls and shop fronts
	SH	Landscaping, irrigation and horticultural works
	SI	Lifts, escalators and travellers (installation, commissioning and maintenance)
	SJ	Piling and specialized foundations for buildings and structures
	SK	Road markings and signage
	SL	Structural steelwork fabrication and erection
	SM	Timber buildings and structures
	SN	Waterproofing of basements, roofs and walls using specialist systems.
	SO	Water supply and drainage for buildings (wet services, plumbing)
	SP	Building of Homes as contemplated in the Housing Consumer Protection Measures Act (Act No 95 of 1998)

4.5.2 The following wording shall be included in the Notice and Invitation to Tender in all engineering and construction works contracts, where the contractor grading designation is based on the estimated tender value:

Tenders should have a CIDB contractor grading of . . . or higher.

4.5.3 The following wording shall be included in the Tender Data, where the class of work is designated in terms of column 2 of Table 9:

Clause number (refer to AnnexF)	
F.2.1	<p>Only those tenderers who are registered with the CIDB, or are capable of being so registered within 10 working days from the closing date for submission of tenders, in a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a ____*. class of construction work, are eligible to submit tenders.</p> <p>Joint ventures are eligible to submit tenders provided that:</p> <ol style="list-style-type: none"> 1. every member of the joint venture is registered with the CIDB within 10 days from the closing date for tenders; 2. the lead partner has a contractor grading designation in the ____* class of construction work; and 3. the combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a ____* class of construction work, are eligible to submit tenders.

* insert class of construction work (see Table 9)

- 4.5.4** The following wording shall be included in the Notice and Invitation to Submit an Expression of Interest in respect of engineering and construction works, where the contractor grading designation is based on the estimated value of a tender that may arise:

Respondents must have a contractor grading designation of ... or higher.

- 4.5.5** The following wording shall be included in the Submission Data:

Clause number (refer to Annex H)	
H.2.1	Only those respondents who are registered with the Construction Industry Development Board, or are capable of being so registered within 21 working days from the closing date for submission of tenders, in a contractor grading designation of ____* or higher, are eligible to submit expressions of interest.

*insert contractor grading designation

- 4.5.6** The following wording may be included in the Submission Data:

Clause number (refer to Annex H)	
H.2.1	Joint ventures are eligible to submit tenders provided that: <ol style="list-style-type: none"> 1 every member of the joint venture is registered with the CIDB within 21 days from the closing date for tenders; 2 the lead partner has a contractor grading designation in the ____* class of construction work; and 3 the combined contractor grading designation calculated in accordance with the Construction Industry Development Regulations is equal to or higher than the required contractor grading designation..

* insert class of construction work (see Table 9)

- 4.5.7** Where a client or employer promotes emerging enterprises within a framework of a targeted development programme as contemplated in terms of Regulation 25(8) of the Construction Industry Development Regulations:

- a) the wording provided in the Notice and Invitation to Tender in terms of 4.5.2 shall be amended as follows:

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

- b) the wording in the Tender Data provided in terms of 4.5.3 shall be amended as follows:

Clause number (refer to Annex F)	
F.2.1	The following tenderers who are registered with the CIDB, or are capable of being so registered within 10 working days from the closing date for the submission of tenders, are eligible to submit tenders: <ol style="list-style-type: none"> a) contractors who have a contractor grading designation equal to or higher than a contractor grading designation determined in accordance with the sum tendered for a ____* class of construction work; and b) contractors registered as potentially emerging contractors with the CIDB who are registered in one contractor grading designation lower than that required in terms of a) above and who satisfy the following criteria: <p style="text-align: right;">**</p>

* insert class of construction work (see Table 9)

**state criteria relevant to employer's targeted development programme

Annex A (informative)

Best practice guidelines

A.1 The Standard for Uniformity in Construction Procurement establishes requirements for construction procurement which are designed to bring about standardization and uniformity in procurement documentation, practices and procedures.

A.2 The guideline documents listed in Table A1 are recognized by the Board as being Construction Procurement Best Practices and provide comprehensive guidance on implementing the requirements of this standard. These documents are referenced in notes below requirements in this standard to facilitate implementation.

Table A1: Procurement best practices guidelines

Title	Synopsis
Best practice guidelines published by the Construction Industry Development Board	
CIDB Best Practice Guideline A1: The Procurement Cycle (1001)	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. The practice guide also presents the recommended approach to performing the various activities and sub-activities
CIDB Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector (1002)	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)	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)	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 Procurement Risks (1005)	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 insurances. It also provides guidelines for the management of risk.
CIDB Best Practice Guideline A6: Applying the Registers to Construction Procurement (1006)	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.

Title	Synopsis
CIDB Best Practice Guideline B1: Formulating and Implementing Preferential Procurement Policies (1007)	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)	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)	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 proforma component documents to facilitate a uniform approach.
CIDB Best Practice Guideline C2: Choosing an appropriate Form of Contract for Engineering and Construction Works (1010)	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)	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)	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)	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.
Standards published by Standards South Africa	

Title	Synopsis
SANS 294, Construction procurement processes, methods and procedures,	<p>This standard provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost effective. It:</p> <ul style="list-style-type: none"> a) describes generic procurement processes around which an organization may develop its procurement system; b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement; c) establishes the framework for the development of an organization's procurement policy including any preferential procurement policy; d) establishes generic methods and procedures for procurements including those pertaining to disposals; and e) provides standard conditions of tender and conditions for the calling for expressions of interest.
SANS 10403, Formatting and Compilation of Construction Procurement Documents	<p>This standard establishes at both prime and subcontract level:</p> <ul style="list-style-type: none"> a) a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and b) the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.
SANS 10396, Implementing Preferential Procurement Policies Using Targeted Procurement Procedures	<p>This standard:</p> <ul style="list-style-type: none"> a) sets out the issues and principles which should be considered when formulating preferential procurement policies and developing associated implementation mechanisms; b) sets out the principles associated with the engagement of targeted enterprises and targeted labour; c) establishes a range of techniques and mechanisms which may be used to provide a framework within which access to markets for targeted enterprises and / or targeted labour can be provided and goals relating to the engagement of such enterprises and / or labour can be set, monitored and evaluated at both project and programme level; d) establishes targeting frameworks and strategies which can be used with a number of different procurement regimes; e) describes techniques for the monitoring and evaluation of the outcomes of a preferential procurement policy; f) provides guidance as to how targeted procurement procedures can be activated in procurement documents; and g) provides guidance on the design and implementation of programmes associated with the implementation of a preferential procurement policy.
Practice Manuals published by the South African Institution of Civil Engineering	
Practice Manual 1: The use of South African National Standards in Construction Procurement	<p>This practice manual provides insights into and guidance in the use of the following construction procurement South African National Standards:</p> <ul style="list-style-type: none"> • SANS 294, <i>Construction procurement processes, methods and systems.</i> • SANS 10403, <i>Formatting and compiling of construction procurement documents.</i> • SANS 10396, <i>Implementing preferential procurement policies using targeted procurement procedures.</i> • SANS 1914 family of standards for targeted procurement; • SANS 1921 family of standards for construction and management requirements for works contracts; and • SANS 2001 family of standards for construction works.

Title	Synopsis
Practice Manual 2: Delivering construction projects using the design by employer contracting strategy	<p>This practice manual, which was developed in association with the CIDB, presents an overview of the different types of contracting strategies associated with engineering and construction contracts and the delivery of projects using the design by employer contracting strategy. It thereafter describes the principal actions associated with activities within the project initiation, project implementation and project completion processes and identifies the input and output to these actions and their dependencies.</p> <p>The manual also provides information on the administration of design by employer contracts in accordance with the provisions of GCC 2004, the JBCC 2000, FIDIC (1999) and NEC forms of contract and tools and techniques associated with project management.</p>

Annex B
(normative)

Standard Notice and Invitation to Tender

<p>Tenders are invited for the provision of</p> <p>The Employer is</p> <p>The physical address for collection of tender documents is:</p> <p>Documents may be collected during working hours after 09:00 on</p> <p>A non-refundable tender deposit of R.....payable by cheque made out in favour of the Employer is required on collection of the tender documents.</p> <p>Queries relating to the issues of these documents may be addressed to Mr/Ms, Tel No., Fax No. e mail</p> <p>A compulsory pre tender meeting with representatives of the Employer will take place at on starting at hrs.</p> <p>The closing time for receipt of tenders is hrs on Telegraphic, telephonic, telex, facsimile and late tenders will not be accepted.</p> <p>Requirements for sealing, addressing, delivery, opening and assessment of tenders are stated in the Tender Data.</p>	<p>Guidance</p> <p><i>Describe briefly what is to be procured, and if appropriate, over what time period.</i></p> <p><i>Omit if not a requirement</i></p> <p><i>Omit if not a requirement</i></p>
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Annex C (normative)

Form of offer and acceptance

- Note:** 1 This form of offer and acceptance is identical to that contained in Annex G of SANS 294:2004, *Construction Procurement Processes, Procedures and Methods*.
- 2 SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*, provides guidance on the formulation of the wording for the actual offer where it is not based on the offered total of prices.

Offer

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of:

.....
The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the tender schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

.....Rand (in words); R(in figures) (or other suitable wording)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

Signature(s)

Name(s)

Capacity

for the

tenderer

(Name and address of organization)

Name and
signature of
witness

Date

Acceptance

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part 1 Agreements and contract data, (which includes this agreement)

Part 2 Pricing data

Part 3 Scope of work.

Part 4 Site information

and drawings and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the tender schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this agreement. No amendments to or deviations from said documents are valid unless contained in this schedule, which must be signed by the authorised representative(s) of both parties.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data at, or just after, the date this agreement comes into effect. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five days of the date of such receipt notifies the employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

Signature(s)

Name(s) _____

Capacity _____

for the
Employer _____

(Name and address of organization)

Name and
signature of
witness _____

Date _____

Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1 Subject _____

Details _____

2 Subject _____

Details _____

3 Subject _____

Details _____

4 Subject _____

Details _____

By the duly authorised representatives signing this schedule of deviations, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the tender schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

For the tenderer:

Signature(s) _____

Name(s) _____

Capacity _____

(Name and address of organization)Name and
signature of
witness _____

Date _____

For the Employer

Signature(s) _____

Name(s) _____

Capacity _____

(Name and address of organization)Name and
signature of
witness _____

Date _____

Annex D

(normative)

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

PREFERENCING SCHEDULE (Direct preference)

1 Definitions

The following definitions shall apply to this schedule:

Insert definitions for Targeted Enterprises in here

2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES

The tenderer, who being a Targeted Enterprise undertakes to:

- 1) not subcontract more than ...*% of the Net Amount of the Contract to non-Targeted Enterprises;
- 2) remain a Targeted Enterprise for the duration of the Contract;
- 3) accept the sanctions set out in Section 3 below should conditions 1 or 2 be breached;
- 4) complete the Tender Preference Claim Form contained in Section 4 below; and
- 5) complete a Targeted Declaration Affidavit and submit this with the tender.

3 SANCTIONS RELATING TO BREACHES OF PREFERENCING CONDITIONS

Termination of the Contract or a financial penalty payable to the Employer equal to times the number of tender evaluation points awarded in respect of the preference claimed.

4 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY

I/we apply on behalf of my/our firm for the following preference:

Insert category description and percentage of maximum tender evaluation points

Category of Targeted Enterprise	Percentage of maximum tender evaluation points provided for in the Preferential Procurement Policy Framework Act (Act 5 of 2000)	Preference claimed for Targeted Enterprise status (Y=yes)

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm or sole proprietor confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature :

Name :

Duly authorised to sign on behalf of :

Telephone :

Fax :

Date :

*insert percentage value, typically between 20 and 25%

Annex E (normative)

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

PREFERENCING SCHEDULE (Direct participation)

1 DEFINITIONS

The following definitions shall apply to this schedule:

Insert definition for Targeted Enterprises and / or Targeted Labour in here.

2 CONDITIONS ASSOCIATED WITH THE GRANTING OF PREFERENCES

The Tenderer, undertakes to:

- 1) engage one or more Targeted Enterprises / Targeted Labour (adjust as necessary) in accordance with the provisions of the SANS 1914- *(insert part number and title as relevant)* as varied in Section 3 hereunder;
- 2) deliver to the Employer, within 5 working days of being requested in writing to do so, a completed Joint Venture Disclosure Form (Annex D of SANS 1914-1) and a Joint Venture Agreement, should a joint venture be proposed at prime contract level with Targeted Partners to satisfy Contract Participation Goal undertakings *(adjust wording to reflect documentation that is required or delete)*;
- 3) deliver to the Employer, within 5 working days of being requested in writing to do so, a Targeted Enterprise Declaration Affidavit in respect of all Targeted Enterprises engaged at prime contract level to satisfy Contract Participation Goal undertakings *(delete if not required)*;
- 4) accept the sanctions set out in Section 4 below should such conditions be breached;
- 5) complete the Tender Preference Claim Form contained in Section 5 below; and
- 6) complete the Supporting Contract Participation Goal Calculation contained in this schedule.

3 VARIATIONS TO THE TARGETED CONSTRUCTION PROCUREMENT SPECIFICATION SANS 1914- *(insert part number)*

The variations to SANS 1914- *(insert part number)* are set out below. Should any requirements of the variations conflict with requirements of SANS 1914- *(insert part number and title as relevant)*, the requirements of the variations shall prevail.

Insert variations if any. If none, insert "There are no variations".

4 SANCTIONS

In the event that the Tenderer fails to substantiate that any failure to achieve the Contract Participation Goal relating to the granting of a preference was due to quantitative under runs, the elimination of items, or any other reason beyond the Contractor's control which may be acceptable to the Employer, it shall be liable to pay to the Employer a financial penalty calculated in the following manner:

$$P = 0,15 \times \frac{(D - D_o)}{(100)} \times N_A$$

where D = tendered Contract Participation Goal percentage.
 D_o = the Contract Participation Goal which the Employer's representative based on the credits passed, certifies as being achieved upon completion of the Contract.
 N_A = Net Amount
 P = Rand value of penalty payable

5 TENDER PREFERENCE CLAIM IN RESPECT OF ENTERPRISE STATUS OR STRUCTURE OF THE TENDERING ENTITY

I / we hereby tender a Contract Participation Goal of% in order to claim a preference.

The undersigned, who warrants that he / she is duly authorised to do so on behalf of the firm or sole proprietor confirms that he / she understands the conditions under which such preferences are granted and confirms that the tenderer satisfies the conditions pertaining to the granting of tender preferences.

Signature :

Name :

Duly authorised to sign on behalf of :
.....

Telephone :

Fax : Date :
.....

SUPPORTING CONTRACT PARTICIPATION GOAL CALCULATION

Insert Annex A: Tendered goal calculation from relevant part of SANS 1914

Annex F

(normative)

Standard Conditions of Tender

- Note:**
- 1 These Standard Conditions of Tender are identical to that contained in Annex F of SANS 294: 2004, *Construction Procurement Processes, Procedures and Methods*.
 - 2 Annex E of SANS 294, *Construction Procurement Processes, Procedures and Methods*, and SAICE's Practice Manual #1, *The use of South African National Standards in Construction Procurement*, provide guidance on referencing these Standard Conditions of Tender in procurement documents.

F.1 General

F.1.1 Actions

The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently.

F.1.2 Tender Documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

F.1.3 Interpretation

F.1.3.1 The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

F.1.3.2 These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

F.1.4 Communication and employer's agent

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be read, copied and recorded. Writing shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

F.1.5 The employer's right to accept or reject any tender offer

F.1.5.1 The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before to the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but will give reasons for such action upon written request to do so.

F.1.5.2 After the cancellation of a tender process or the rejection of all tender offers the employer may abandon the proposed procurement and re-issue a similar tender notice and invitation to tender not less than six months after the closing date for tender offers or have it performed in another manner at any time.

F.2 Tenderer's obligations

F.2.1 Eligibility

Submit a tender offer only if the tenderer complies with the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

F.2.2 Cost of tendering

Accept that the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer satisfy requirements.

F.2.3 Check documents

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

F.2.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

F.2.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

F.2.6 Acknowledge addenda

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

F.2.7 Site visit and clarification meeting

Attend, where required, a site visit and clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

F.2.8 Seek clarification

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

F.2.9 Insurance

Be aware that the extent of insurance to be provided by the employer (if any) may not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

F.2.10 Pricing the tender offer

F.2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

F.2.10.2 Show VAT payable by the employer separately as an addition to the tendered total of the prices.

F.2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

F.2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

F.2.11 Alterations to documents

Not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

F.2.12 Alternative tender offers

F.2.12.1 Submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted. The alternative tender offer is to be submitted with the main tender offer together with a schedule that compares the requirements of the tender documents with the alternative requirements the tenderer proposes.

F.2.12.2 Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

F.2.13 Submitting a tender offer

F.2.13.1 Submit a tender offer to provide the whole of the works, services or supply identified in the contract data, unless stated otherwise in the tender data.

F.2.13.2 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.

F.2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

F.2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

F.2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.6 Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

F.2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

F.2.13.8 Accept that the employer shall not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

F.2.14 Information and data to be completed in all respects

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

F.2.15 Closing time

F.2.15.1 Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting shall not be accepted as proof of delivery. The employer shall **not** accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the tender data.

F.2.15.2 Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

F.2.16 Tender offer validity

F.2.16.1 Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

F.2.16.2 If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period.

F.2.17 Clarification of tender offer after submission

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the tender offer is sought, offered, or permitted. The total of the prices stated by the tenderer shall be binding upon the tenderer.

F.2.18 Provide other material

F.2.18.1 Provide, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

F.2.18.2 Dispose of samples of materials provided for evaluation by the employer, where required.

F.2.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

F.2.20 Submit securities, bonds, policies, etc.

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

F.2.21 Check final draft

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

F.2.22 Return of other tender documents

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

F.2.23 Certificates

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

F.3 The employer's undertakings**F.3.1 Respond to clarification**

Respond to a request for clarification received up to five working days prior to the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

F.3.2 Issue Addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date of the Tender Notice until seven days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, will then notify it to all tenderers who drew documents.

F.3.3 Return late tender offers

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

F.3.4 Opening of tender submissions

F.3.4.1 Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

F.3.4.2 Announce at the opening held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened, the total of his prices, preferences claimed and time for completion, if any, for the main tender offer only.

F.3.4.3 Make available the record outlined in F.3.4.2 to all interested persons upon request.

F.3.5 Two-envelope system

F.3.5.1 Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

F.3.5.2 Evaluate the quality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the quality evaluation above the minimum number of points for quality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for quality.

F.3.6 Non-disclosure

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

F.3.7 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

F.3.8 Test for responsiveness

Determine, on opening and before detailed evaluation, whether each tender offer properly received:

- a) meets the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- change the Employer's or the tenderer's risks and responsibilities under the contract, or
- affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

F.3.9 Arithmetical errors

Check responsive tender offers for arithmetical errors, correcting them in the following manner:

- Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- If a bill of quantities (or schedule of quantities or schedule of rates) applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate will be corrected.
- Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if a bill of quantities applies) to achieve the tendered total of the prices.

Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of his arithmetical errors in the manner described above.

F.3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

F.3.11 Evaluation of tender offers

F.3.11.1 General

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate it using the tender evaluation method that is indicated in the Tender Data and described below:

Method 1: Financial offer	1) Rank tender offers from the most favourable to the least favourable comparative offer. 2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	1) Score tender evaluation points for financial offer. 2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing. 4) Calculate total tender evaluation points. 5) Rank tender offers from the highest number of tender evaluation points to the lowest. 6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Score financial offers, preferences and quality, as relevant, to two decimal places.

F.3.11.2 Scoring Financial Offers

Score the financial offers of remaining responsive tender offers using the following formula:

$N_{FO} = W_1 \times A$ where:

N_{FO} = the number of tender evaluation points awarded for the financial offer.

W_1 = the maximum possible number of tender evaluation points awarded for the financial offer as stated in the Tender Data.

A = a number calculated using either formulas 1 or 2 below as stated in the Tender Data.

Formula	Comparison aimed at achieving	Option 1	Option 2
1	Highest price or discount	$A = (1 + \frac{P - P_m}{P_m})$	$A = P / P_m$
2	Lowest price or percentage commission / fee	$A = (1 - \frac{P - P_m}{P_m})$	$A = P_m / P$

where:

P_m = the comparative offer of the most favourable tender offer.

P = the comparative offer of tender offer under consideration.

F.3.11.3 Scoring quality (functionality)

Score quality in each of the categories stated in the Tender Data and calculate total score for quality.

F.3.12 Insurance provided by the employer

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

F.3.13 Acceptance of tender offer

F.3.13.1 Accept tender offer only if the tenderer satisfies the legal requirements stated in the Tender Data.

F.3.13.2 Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period. Providing the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a contract between the employer and the successful tenderer as described in the form of offer and acceptance.

F.3.14 Notice to unsuccessful tenderers

After the successful tenderer has acknowledged the employer's notice of acceptance, notify other tenderers that their tender offers have not been accepted.

F.3.15. Prepare contract documents

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents,
- c) other revisions agreed between the employer and the successful tenderer, and
- d) the schedule of deviations attached to the form of offer and acceptance, if any.

F.3.16 Issue final contract

Prepare and issue the final draft of contract documents to the successful tenderer for acceptance as soon as possible after the date of the employer's signing of the form of offer and acceptance (including the schedule of deviations, if any). Only those documents that the conditions of tender require the tenderer to submit, after acceptance by the employer, shall be included.

F.3.17 Complete adjudicator's contract

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

F.3.18 Provide copies of the contracts

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

Annex G
(normative)

Form of Guarantee

Contract No. _____

WHEREAS

_____ (hereinafter referred to as "the Employer") entered into, a Contract with

_____ (hereinafter called "the Contactor") on the _____ day of _____ 20____, for the construction of

at _____

AND WHEREAS it is provided by such Contract that the Contractor shall provide the Employer with security by way of a guarantee for the due and faithful fulfilment of such Contract by the Contractor;

AND WHEREAS _____ has/have at the request of the Contractor, agreed to give such guarantee;

NOW THEREFORE WE, _____ do hereby guarantee and bind ourselves jointly and severally as Guarantor and Co-principal Debtors to the Employer under renunciation of the benefits of division and excussion for the due and faithful performance by the Contractor of all the terms and conditions of the said Contract, subject to the following conditions:

1. The Employer shall, without reference and/or notice to us, have complete liberty of action to act in any manner authorized and/or contemplated by the terms of the said Contract, and/or to agree to any modifications, variations, alterations, directions or extensions of the Completion Date of the Works under the said Contract, and that its rights under this guarantee shall in no way be prejudiced nor our liability hereunder be affected by reason of any steps which the Employer may take under such Contract, or of any modification, variation, alterations of the Completion Date which the Employer may make, give, concede or agree to under the said Contract.
2. This guarantee shall be limited to the payment of a sum of money
3. The Employer shall be entitled, without reference to us, to release any guarantee held by it, and to give time to or compound or make any other arrangement with the Contractor.
4. This guarantee shall remain in full force and effect until the issue of the Certificate of Completion in terms of the Contract, unless we are advised in writing by the Employer before the issue of the said Certificate of his intention to institute claims, and the particulars thereof, in which event this guarantee shall remain in full force and effect until all such claims have been paid or liquidated.
5. Our total liability hereunder shall not exceed the Guaranteed Sum of _____ (R _____)
6. The Guarantor reserves the right to withdraw from this guarantee by depositing the Guaranteed Sum with the beneficiary, whereupon our liability hereunder shall cease.
7. We hereby choose our address for the serving of all notices for all purposes arising herefrom as _____

IN WITNESS WHEREOF this guarantee has been executed by us at _____

on this _____ day of _____ 20_____.

As witnesses:

1. _____ Signature _____

2. _____ Duly authorized to
sign on behalf of _____

Address _____

Annex H

(normative)

Standard Conditions for the calling for Expressions of Interest

- Note:**
- 1 These Standard Conditions for the Calling for Expressions of Interest are identical to that contained in Annex H of SANS 294: 2004, *Construction Procurement Processes, Procedures and Methods*.
 - 2 Annex G of SANS 294, *Construction Procurement Processes, Procedures and Methods*, provide guidance on referencing these Standard Conditions for the Calling for Expressions of Interest in procurement documents.

H.1 General

H.1.1 Actions

The employer and each respondent submitting an expression of interest shall comply with these conditions for calling for expressions of interest. In their dealings with each other, they shall discharge their duties and obligations as set out in H.2 and H.3, timeously and with integrity, and behave equitably, honestly and transparently.

H.1.2 Supporting documents

The documents issued by the employer for the purpose of obtaining expressions of interest are listed in the submission data.

H.1.3 Interpretation

The submission data and additional requirements contained in the submission schedules that are included in the returnable documents are deemed to be part of these conditions for the calling for expressions of interest.

H.1.4 Communication and employer's agent

Each communication between the employer and a respondent shall be to or from the employer's agent only, and in a form that can be read, copied and recorded. Writing shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a respondent. The name and contact details of the employer's agent are stated in the submission data.

H.2 Respondent's obligations

H.2.1 Eligibility

Submit an expression of interest only if the respondent complies with the criteria stated in the submission data and the respondent, or any of his principals, is not under any restriction to do business with the employer.

H.2.2 Cost of submissions

Accept that the employer will not compensate the respondent for any costs incurred in the preparation and delivery of a submission.

H.2.3 Check documents

Check the submission documents on receipt, including pages within them, and notify the employer of any discrepancy or omission.

H.2.4 Acknowledge addenda

Acknowledge receipt of addenda to the submission documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the submission data, in order to take the addenda into account.

H.2.5 Clarification meeting

Attend the clarification meeting(s) at which respondents may familiarize themselves with the proposed work, services or supply (and location, etc.) and raise questions. Details of the meeting(s) are stated in the submission data.

H.2.6 Seek clarification

Request clarification of the submission documents, if necessary, by notifying the employer at least five working days before the closing time stated in the submission data.

H.2.7 Making a submission

H.2.7.1 Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.

H.2.7.2 Seal the original and each copy of the submission as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the submission data, as well as the respondent's name and contact address.

H.2.7.3 Accept that the employer shall not assume any responsibility for the misplacement or premature opening of the submission if the outer package is not sealed and marked as stated.

H.2.8 Information and data to be completed in all respects

Accept that submissions, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

H.2.9 Closing time

Ensure that the employer receives the submissions at the address specified in the submission data not later than the closing time stated in the submission data. Proof of posting shall not be accepted as proof of delivery. The employer shall not accept submissions submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the submission data.

Accept that, if the employer extends the closing time stated in the submission data for any reason, the requirements of these conditions for expressions of interest apply equally to the extended deadline.

H.2.10 Clarification of submission

Provide clarification of a submission in response to a request to do so from the employer during the evaluation of submissions.

H.2.11 Provide other material

Provide, on request by the employer, any other material that has a bearing on the submission or the respondent's commercial position. Should the respondent not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the submission as non-responsive.

H.3 Employer's undertakings

H.3.1 Respond to clarification

Respond to a request for clarification received up to five working days before the submission closing time stated in the submission data and notify all respondents who attended the clarification meetings, if any, of those responses.

H.3.2 Issue Addenda

If necessary, issue addenda that may amend or amplify the submission documents to each respondent during the period from the date of the calling for expressions of interest until seven days before the closing time for submissions stated in the submission data. If, as a result, a respondent applies for an extension to the closing time stated in the submission data, the employer may grant such extension and, shall then notify it to all respondents.

H.3.3 Late submissions

Deal with late submissions as stated in the submission data.

H.3.4 Opening of submissions

Record the name of each respondent whose submission is opened and acknowledge receipt of their submission.

H.3.5 Non-disclosure

Not disclose to respondents, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of submissions until after the evaluation process is complete.

H.3.6 Grounds for rejection and disqualification

Determine whether there has been any effort by a respondent to influence the processing of submissions and instantly disqualify a respondent if it is established that he engaged in corrupt or fraudulent practices.

H.3.7 Test for responsiveness

Determine, on opening and before detailed evaluation, whether each submission received:

- a) meets the requirements of these conditions for the calling for expressions of interest;
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the call for expressions of interest.

H.3.8 Non-responsive submissions

Reject all non-responsive submissions.

H.3.9 Evaluation of responsive submissions

H.3.9.1 Appoint an evaluation panel of not less than three persons. Evaluate submissions using the evaluation criteria established in the submission data.

H.3.9.2 Notify the respondents of the outcome of the evaluation process within two weeks of the evaluation report being accepted by the employer.

Annex I
(normative)

Selection of subcontractors by employers and contractors

Insert the following in the Scope of Work:

Subcontracting procedures

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 SANS 294 issued to tendering subcontractors. 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 tender submission, deviations from the tender document accepted by the Employer and the(*insert name of subcontract or name of procurement document prepared for this purpose*)

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

Note: The CIDB Best Practice Guideline D1, *Subcontracting Arrangements*, provides guidance on the selection of a suitable form of subcontracts.

NOTICE 63 OF 2004

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000****(ACT 38 OF 2000)****CONSTRUCTION PROCUREMENT BEST PRACTICE**

The Construction Industry Development Board (CIDB) is a Schedule 3A public entity established in terms of the Construction Industry Development Board Act, 2000 to provide leadership to stakeholders to stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry's enhanced role in the country's economy.

The Act Tasks the Board to:

- 4. (c) determine and establish best practice that promotes—**
- (i) improved industry stability;**
 - (ii) improved industry performance, efficiency and effectiveness;**
 - (iii) procurement and delivery management reform;**
 - (iv) improved public sector delivery management;**
 - (v) national social and economic objectives, including—**
 - (aa) growth of the emerging sector;**
 - (bb) labour absorption in the construction industry;**
 - (cc) improved labour relations; and**
 - (dd) positive safety, health and environmental outcomes;**
 - (vi) human resource development in the construction industry;**
- (d) promote best practice through the development and implementation of appropriate programmes and measures aimed at best practice and improved performance of public and private sector clients, contractors and other participants in the construction delivery process;**
- (e) promote uniform application of policy with regard to the construction industry throughout all spheres of Government;**

After publishing Draft Construction Procurement Best Practice in Board Notice 126 of 2003 in Government Gazette No 25656 of 31 October 2003, for comment and evaluating comments received, the CIDB has in terms of section 4(c) of the Act, published Construction Procurement Best Practices contained in the schedule hereto.

These Best Practices may be used to implement construction procurement in accordance with the requirements of the CIDB Standard for Uniformity in Construction Procurement published in terms of Regulation 24 (b) of the Construction Industry Development Regulations, issued in terms of section 33 of the Construction Industry Development Board Act.

.....
BRIAN CAMERON BRUCE
CHAIRPERSON: CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

CONSTRUCTION PROCUREMENT BEST PRACTICE

1 PREAMBLE

Supply chain management is concerned with demand, acquisition, logistics and disposal management and supply chain performance. Procurement forms but one element of supply chain management.

Construction procurement is an important activity within the infrastructure delivery management processes that are associated with the provision and maintenance of construction works and forms an integral part of supply chain management functions. Procurement occurs at any point in the delivery management process where resources (services or supplies in any combination) external to the client are required. It also occurs when surplus plant, equipment and materials is disposed of and the when redundant buildings and infrastructure need to be demolished.

Procurement systems, practices and procedures have an impact on the construction industry. For example:

- Ineffective and inefficient procurement systems can impede delivery or compromise the intended project outcomes.
- Fragmented, non-uniform procurement practices between different authorities and different spheres of the public and private sector may increase tendering costs, expose tenderers to increased risks and frustrate initiatives aimed at the development of an adequate procurement skills base.
- Undue emphasis on lowest price rather than best value may impact negatively on industry performance in terms of time, cost and quality. It can affect the sustainability of enterprises and their ability to develop and retain a skilled workforce, and to actively promote safety, health and the environment. It tends to encourage opportunistic tenders, leading to a delivery paradigm that focuses on claims and adversity.
- Poor choices in contracting, pricing and targeting strategies can lead to disappointing or costly project outcomes.

For clients construction procurement is associated with specific types of risk. Unlike most forms of procurement, construction procurement generally involves a lengthy process from conception to delivery and thereafter a period of more than 50 years from construction to deconstruction. Delivery involves a process that must be managed to ensure quality, cost efficiency and public health and safety over the full lifespan of the product. To ensure these outcomes payment is usually phased throughout the delivery cycle. These are some of the aspects that define the specialized nature of construction procurement.

Client needs in construction projects are sometimes unique and consequently each project meeting those needs has unique characteristics. Construction activities are not ongoing and the team assembled for a project usually disbands upon completion. At the same time, clients are under pressure to deliver projects on time, on budget, to a higher standard of quality and within shorter time frames. The cost of finance on many projects is such that an early return on investment is preferred. Clients accordingly require a range of contracting options and procurement strategies to satisfy their requirements.

South Africa's public procurement system is in the process of being overhauled, modernised and transformed. It is moving away from the rigid, prescriptive and centralised system that was established in the 1960s whereby tender boards assumed responsibility for procurement to a more flexible, performance-based and decentralized system. The public sector has in

recent years also explored new ways of delivering construction works, including design and build and public private partnerships.

Further progress and proficiency in both the public and private sectors will be supported by construction procurement best practice that promotes delivery efficiency, effectiveness and value to clients and society.

2 UNIFORMITY, ETHICS AND EFFICACY IN PROCUREMENT METHODS, PROCEDURES AND PROCESSES

Procurement can broadly be regarded as being the sequence of activities that creates, manages and fulfils contracts, the principal activities being:

- 1 Establish what is to be procured
- 2 Decide on procurement strategies
- 3 Solicit tender offers
- 4 Evaluate tender offers
- 5 Award contract
- 6 Administer contracts and confirm compliance with requirements

There are a limited number of generic procurement methods, procedures and processes associated with each of these activities. For example, tender offers may be:

- solicited from a single tenderer;
- invited only from tenderers who have expressed an interest to undertake the work and are qualified to do so;
- submitted in response to an invitation to do so; or
- solicited from those tenderers whose proposals are considered to be acceptable.

Likewise, tender offers can be evaluated in terms of price, price and preference, price and quality or price, preference and quality.

There can be different approaches to procurement between the public and private sector as best value may take on different meanings in these two sectors. Capability and capacity to engage in specific procurement strategies may also necessitate that certain clients limit their procurement options. Nevertheless, many of the fundamental procurement methods, procedures and practices apply equally to both the public and private sectors.

Uniformity in construction procurement procedures, processes and practices promotes improved industry performance and improved value to clients. It engenders a culture of consistency and predictability within the procurement process.

- CIDB Construction Procurement Best Practice Guideline A1 (1001), *The procurement cycle*, establishes desirable and appropriate procurement processes and procedures.
- CIDB Construction Procurement Best Practice Guideline A2 (1002), *Applying the procurement prescripts of the CIDB in the Public Sector*, establishes desirable and appropriate construction procedures and methods that are consistent with the public sector regulatory environment.
- CIDB Construction Procurement Best Practice Guideline A3 (1003), *Evaluating tender offers*, provides desirable and appropriate standards for the evaluation of tender offers.
- CIDB Construction Procurement Best Practice Guideline A4 (1004), *Evaluating Quality in Tender Submissions*, establishes desirable and appropriate procedures for the evaluation of quality in all forms of construction procurement.
- CIDB Construction Procurement Best Practice Guideline A6 (1006), *Applying the Registers to Construction Procurement*.

- CIDB Construction Procurement Best Practice Guideline B1 (1007), *Formulating and Implementing Preferential Procurement Policies*, provides desirable and appropriate procedures to enable the legislative requirements to be satisfied in construction procurement.
- CIDB Construction Procurement Best Practice Guideline B2 (1008), *Methods and procedures for implementing Preferential Procurement Policies*, establishes desirable and appropriate procedures and methods for implementing preferential procurement policies.

3 UNIFORMITY AND EFFICACY OF PROCUREMENT DOCUMENTATION

Procurement documents comprise those documents required to:

- solicit tender offers;
- prequalify tenderers so that they may be invited to tender; and
- establish the terms and conditions of the contract.

Uniformity in procurement documentation enables tenderers to more accurately price the risks, which they are to assume. It can enable the effectiveness and efficiency of procurement to be improved, promote savings in cost and an improvement in quality of procurement outcomes. It also facilitates effective participation by new entrants or emerging enterprises to the construction environment. Uniformity permits the documentation process to be simplified and computerized and provides a platform for the future introduction of e-procurement processes.

The two fundamental considerations in reducing the number of forms of contract in use in are:

- uniformity; and
- having documentation capable of catering for a wide range of client requirements.

The first stage in any initiative aimed at uniformity is to limit the choice of the forms of contract, based on an evaluation of the existing forms of contract against desirable and objective criteria, in a manner that ensure that clients are provided with a range of contracting and pricing strategies. Obviously, forms of contract which apply only to specific sub-sectors of the industry cannot be considered.

The second stage in any such initiative is to develop a common format for the compilation of procurement documents and to establish generic conditions of tender that establishes a tenderer's obligations in submitting a tender and the employer's undertakings in soliciting and evaluating tender offers. Similarly, standard conditions for the calling for expressions of interest are also desirable.

- CIDB Construction Procurement Best Practice Guideline C1 (1009), *Preparing procurement documents*, establishes a standard structure for procurement documents and identifies desirable and appropriate forms of contract and component documents.
- CIDB Construction Procurement Best Practice Guideline C2 (1010), *Choosing an appropriate Form of Contract for Engineering and Construction Works Contracts*, establishes desirable and appropriate methods for selecting an appropriate form of contract for a project or for use within an organization.

4 CONTRACTING STRATEGIES

There are a number of ways in which risks, liabilities and obligations can be allocated between the two main parties to a contract, i.e. the employer and the contractor. Total investment costs are influenced by the risk / reward strategy that is adopted in a particular procurement. Contracting and pricing strategy permits the employer to allocate risk to the party that is best able to manage the risk.

- CIDB Construction Procurement Best Practice Guideline A5 (1005), *Managing Construction Procurement Risks*, establishes desirable and appropriate risk management practices.

5 DISPUTE RESOLUTION

The procedure whereby disputes are settled by arbitration or court proceedings is both costly and time consuming. These procedures are not necessarily in the interests of the parties, or appropriate. The delayed resolution of disputes impacts negatively on project outcomes for all participants.

Most standard forms of contract make provision for the settlement of disputes by a number of means including expert determination, mediation, conciliation and adjudication. Each of these has its place in the course of dispute resolution.

ADJUDICATION

Adjudication has become the preferred international procedure for dispute resolution. This rapid and relatively inexpensive procedure, which is conducted by a third party intermediary within the contract period, results in a decision that is binding on the parties in dispute. The decision is final, unless and until it is reviewed by either arbitration or court proceedings.

The strength of adjudication lies in the contractual commitment by the parties to engage a specific, named (independent) person or persons who will become and remain acquainted with the project and are therefore enabled to make an expeditious finding. Furthermore, the terms and procedures for the process of adjudication are agreed and detailed in the contract itself. This results in an informed, transparent, relatively speedy decision.

Several international forms of contract in South Africa make use of adjudication and there is a need for the South African construction industry to embrace this form of dispute resolution in its local forms of contract.

- CIDB Construction Procurement Best Practice Guideline C3 (1011), *Adjudication*, provides desirable and appropriate procedures for a third party intermediary to conduct a rapid and relatively inexpensive dispute resolution process which results in a decision which is binding on the parties in dispute and is final, unless and until later reviewed by either arbitration or court proceedings, as provided for in the contract.

6 SUBCONTRACTING ARRANGEMENTS

Subcontractors often have unequal negotiating power with prime contractors due to the sheer size of the parties and their dependency for future work. Traditionally, as employers only have a contractual relationship with the prime contractor, they regard subcontracting issues to be the prime contractor's problem and of no concern to them. Subcontracting is, however, an effective means of involving small, medium and micro enterprises in the supply chain. In fact the construction industry is characterised by a wide range of specialist

subcontractors, whose function is critical to project outcomes. It is in the interests of a healthy industry that the position of subcontractors should be strengthened by procurement best practice.

- CIDB Construction Procurement Best Practice Guideline D1 (1012), *Subcontracting Arrangements*, describes desirable and appropriate subcontracting practices. It also identifies standard industry forms of subcontract which are framed around fair conditions of subcontract.

7 JOINT VENTURE ARRANGEMENTS

Joint ventures may be formed for a variety of reasons, common ones being the following:

- The project is too large, or complex, for a company to undertake with its available resources.
 - The project requires specialist skills, or abilities, which a company is unable, itself, to provide.
 - The skills and expertise of emerging firms can be developed through their association in joint ventures with well-established experienced companies.
- CIDB Construction Procurement Best Practice Guideline D2 (1013), *Joint venture arrangements*, describes desirable and appropriate joint venturing practice, particularly where joint ventures are formed in response to preferential procurement policies. It also identifies standard industry joint venture agreements.

Schedule

Construction Procurement Best Practice Library

The standards, processes, procedures, methods and systems embodied in the following CIDB publications are deemed desirable and appropriate by the Board:

Title	Synopsis
Theme: Uniformity and efficacy in procurement methods, procedures and processes	
Best Practice Guideline A1: The Procurement Cycle (1001)	This practice guide identifies six main procurement activities that apply to all 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. The practice guide also presents the recommended approach to performing the various activities and sub-activities
Best Practice Guideline A2: Applying the procurement prescripts of the CIDB in the Public Sector (1002)	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.
Best Practice Guideline A3: Evaluating tender offers (1003)	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.
Best Practice Guideline A4: Evaluating Quality in Tender Submissions (1004)	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.
Best Practice Guideline A6: Applying the Registers to Construction Procurement (1006)	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.
Best Practice Guideline B1: Formulating and Implementing Preferential Procurement Policies (1007)	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.
Best Practice Guideline B2: Methods and Procedures for Implementing Preferential Procurement Policies (1008)	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 Conditions of Tender, and data capture forms.

Theme: Uniformity and efficacy in procurement documentation	
Best Practice Guideline C1: Preparing Procurement Documents (1009)	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 proforma component documents to facilitate a uniform approach.
Best Practice Guideline C2: Choosing an appropriate Form of Contract for Engineering and Construction Works (1010)	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.
Theme: Contracting strategies	
Best Practice Guideline A5: Managing Construction Procurement Risks (1005)	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 insurances. It also provides guidelines for the management of risk.
Theme: Alternative dispute resolution	
Best Practice Guideline C3: Adjudication (1011)	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.
Theme: Subcontracting arrangements	
Best Practice Guideline D1: Subcontracting Arrangements (1012)	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.
Best Practice Guideline D2: Joint Venture Arrangements (1013)	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.

The following publications are referenced in the abovementioned CIDB publications and as such form an integral part of the provisions of these publications. They too contain desirable and appropriate standards, processes, procedures, methods and systems endorsed by the focus group - and as such also constitute best practice.

Documents	
Title	Synopsis
CIDB Adjudication Procedure (1014)	This document contains an adjudication procedure and an agreement for the appointment by the parties of an adjudicator. It may be used in any form of contract or subcontract.
CIDB Standard Professional Services Contract (1015)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a professional service contract.
CIDB Subcontract For Labour Only Engineering and Construction Works (1016)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a labour only subcontract involving engineering and construction works.
CIDB Joint Venture Agreement (1017)	This joint venture agreement establishes the basic agreement between the joint venture partners and outlines the content of the schedules that are necessary to make the agreement project specific.
CIDB General conditions of purchase (1018)	This standard form of contract establishes the risks, liabilities and obligations of the parties to very basic supply contracts.
CIDB Contract for the Supply and Delivery of Goods (1019)	This standard form of contract establishes the risks, liabilities and obligations of the parties to a simple supply contract.

Documents	
Title	Synopsis
CIDB Supply of Goods (Short Contract) (1020)	This standard form of contract, based on the NEC system, establishes the risks, liabilities and obligations of the parties to a simple supply contract.
CIDB The Supply Contract (1021)	This standard form of contract, based on the NEC system, establishes the risks, liabilities and obligations of the parties to a complex supply contract.
Practice Manuals published by the South African Institution of Civil Engineering	
SAICE Practice Manual #1. The use of South African National Standards in Construction Procurement	This practice manual provides comprehensive guidance on the use of SANS 294, SANS 10403, SANS 10396, and the SANS 1914, SANS 1921 and SANS 2001 families of standards in construction procurement. It also provides guidance on the use of SABS 1200 where procurement documents are compiled using in accordance with the provisions of SANS 10403.
SAICE Practice Manual #2: Delivering construction projects using the design by employer contracting strategy.	This practice manual presents an overview of a number of contracting strategies that are commonly encountered in engineering and construction works contracts and fully describes the processes and sub-processes associated with design by employer contracting strategy. It also outlines the administrative processes associated with FIDIC, GCC, NEC and JBCC forms of contract with this contracting strategy.
Standards published by Standards South Africa	
SANS 294, Construction Procurement processes, procedures and methods	This standard provides processes, methods and procedures for the establishment within an organization of a procurement system that is fair, equitable, transparent, competitive and cost effective. It: <ul style="list-style-type: none"> a) describes generic procurement processes around which an organization may develop its procurement system; b) establishes minimum requirements for the conduct of an organization's employees, agents, board members and office bearers when engaging in procurement; c) establishes the framework for the development of an organization's procurement policy including any preferential procurement policy; d) establishes generic methods and procedures for procurements including those pertaining to disposals; and e) provides standard conditions of tender and conditions for the calling for expressions of interest.
SANS 1914-1, Resource Standard for the Participation of targeted enterprises	These six standard targeted construction procurement standards: <ul style="list-style-type: none"> a) describe the general requirements for engaging targeted enterprises and / or targeted labour on a contract for the provision of supplies, services or works, as relevant; b) specify the contract participation goal (the value of a percentage of the value of the contract which represents the inputs of targeted enterprises and/or targeted labour in the performance of the contract; c) set out the methods by which the contract participation goal will be measured, quantified and verified in the performance of the contract; d) describe the means by which: <ul style="list-style-type: none"> i) progress towards the attainment of the contract participation goal is to be monitored; ii) compliance with requirements will be verified and monitored; and iii) the contract participation goal will be adjusted to accommodate variations to the scope of the contract.
SANS 1914-2, Resource Standard for Participation of targeted partners in joint ventures	
SANS 1914-3, Resource Standard for Participation of targeted enterprises and targeted partners in joint ventures	
SANS 1914-4, Resource Standard for Participation of targeted enterprises and targeted labour (local resources)	
SANS 1914-5, Resource Standard for Participation of targeted labour	
SANS 1914-6, Resource Standard for Participation of targeted enterprises in concession contracts	
SANS 1921-1, Construction and Management Requirements for Works Contracts: Part 1: General requirements for engineering and construction works	This standard establishes general construction and management requirements, which are applicable in a wide range of engineering and construction works contracts
SANS 1921-3, Construction and management requirements for works contracts, Part 3: Structural steelwork	This specification contains requirements for managing the fabrication and erection of structural steelwork.

Documents	
Title	Synopsis
SANS 10403, Formatting and Compilation of Construction Procurement Documents	This standard establishes at both prime and subcontract level: a) a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and b) the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.
SANS 10396, Implementing Preferential Procurement Policies Using Targeted Procurement Procedures	This standard: a) sets out the issues and principles which should be considered when formulating preferential procurement policies and developing associated implementation mechanisms; b) sets out the principles associated with the engagement of targeted enterprises and targeted labour; c) establishes a range of techniques and mechanisms which may be used to provide a framework within which access to markets for targeted enterprises and / or targeted labour can be provided and goals relating to the engagement of such enterprises and / or labour can be set, monitored and evaluated at both project and programme level; d) establishes targeting frameworks and strategies which can be used with a number of different procurement regimes; e) describes techniques for the monitoring and evaluation of the outcomes of a preferential procurement policy; f) provides guidance as to how targeted procurement procedures can be activated in procurement documents; and g) provides guidance on the design and implementation of programmes associated with the implementation of a preferential procurement policy.
Forms of Contract and Agreements	
SAFCEC Joint venture agreement	This joint venture agreement comprises the agreement itself and the heads of agreement between the partners in a joint venture.
FIDIC Joint Venture Consortium Agreement	This joint venture agreement is intended only for joint ventures between professional service providers and is not suitable for use by contractors
BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement	These forms of subcontract establish the risks, liabilities and obligations of the parties to a subcontract
BIFSA Standard Subcontract Agreement 1995 edition (Amended 2000), for use with Principal Building Agreements other than the JBCC Principal Building Agreement.	
BIFSA Labour-only sub-contract	
JBCC series 2000 Nominated / selected Subcontract Agreement	
JBCC series 2000 Engineering General Conditions	
NEC Engineering and Construction Subcontract	
NEC Engineering and Construction Short Subcontract	
SAFCEC General conditions of subcontract (2003 edition)	
FIDIC Conditions of Contract for Construction ("Red Book")	These forms of contract establish the risks, liabilities and obligations of the parties to a contract
FIDIC Conditions of Contract for Plant and Design-Build ("Yellow Book")	
FIDIC Conditions of Contract for FIDIC EPC/Turnkey Projects ("Silver Book")	
FIDIC Short Form of Contract ("Green Book")	
JBCC series 2000 Principal Building Agreement	

Documents	
Title	Synopsis
JBCC series 2000 Minor Works Agreement	
NEC Engineering and Construction Short Contract (ECSC)	
NEC Engineering and Construction Contract (ECC)	
NEC - The Professional Services Contract	This form of contract establishes the risks, liabilities and obligations of the parties to a professional services contract
NEC Term services contract	This form of contract establishes the risks, liabilities and obligations of the parties to a professional services contract
SAICE General Conditions of Contract for Construction Works (2004)	This form of contract establishes the risks, liabilities and obligations of the parties to a contract.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
 Publications: Tel: (012) 334-4508, 334-4509, 334-4510
 Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
 Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
 Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
 Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510
 Advertensies: Tel: (012) 334-4673, 334-4674, 334-4504
 Subskripsies: Tel: (012) 334-4735, 334-4736, 334-4737
 Kaapstad-tak: Tel: (021) 465-7531