

Managing integrity in Construction Procurement

Ms Inba Thumbiran

Programme Manager: Procurement and Delivery

Email: inbat@cidb.org.za



CIDB Mandate: Act 38 of 2000

- Promote sustainable growth of the construction industry and the sustainable participation of the emerging sector in the industry
- Promote improved performance and best practice of public and private sector clients, contractors and other participants
- Promote procurement and delivery management, the **uniform application of policy** throughout all spheres of government, **uniform and ethical standards** including a **Code of Conduct**
- Establish **Registers** as a tool to systematically **regulate and monitor** the performance of the industry and its stakeholders

CIDB Regulation Requirements (Remedy corrupt behavior)

- **CIDB prescripts issued in terms of the CIDB Act of 2000:**
 - **CIDB Code of Conduct** for the Parties engaged in Construction Procurement
 - **CIDB Standard for Uniformity (SFU)** in Construction Procurement.

Applicable to public and private sector

Currently applicable to public sector (departments, municipalities and state owned enterprises)

3

CIDB Code of Conduct

“Section 5(4) of CIDB Act

- To **promote uniform** and **ethical standards** within the construction industry the Board:
 - (a) Must publish a code of conduct for all construction–related procurement and **all participants** involved in the procurement process...”
- Code of Conduct establishes **standards of behaviour** that is consistent with a procurement system that is fair, equitable, transparent, **competitive** and **cost effective**: www.cidb.org.za

Clients and their agents, contractors, subcontractors, consultants, board members, political office bearers and tenderers

4

What does the Code mean?

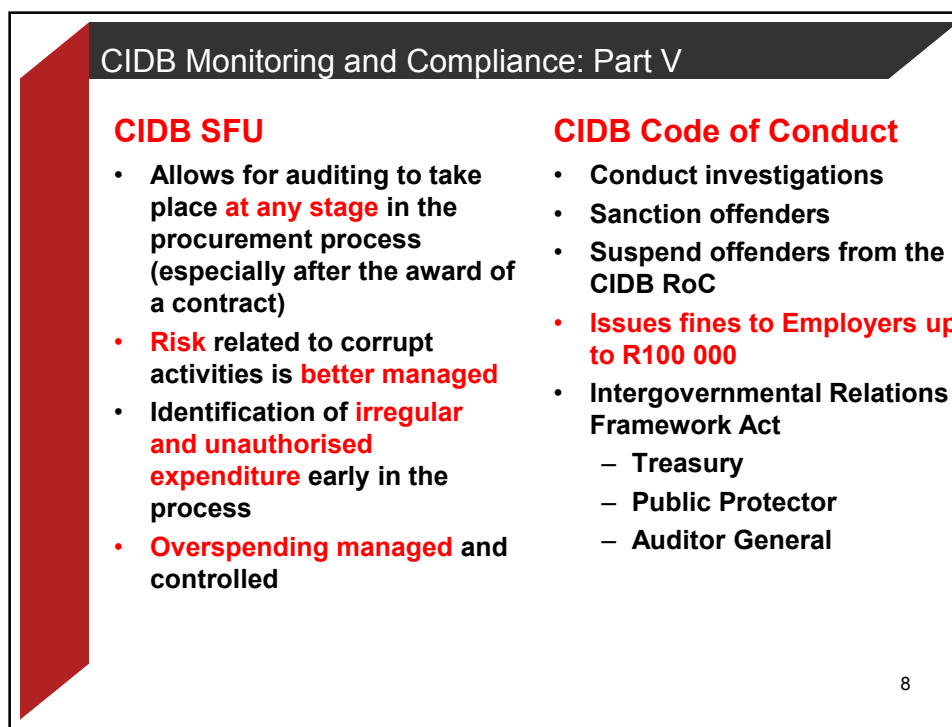
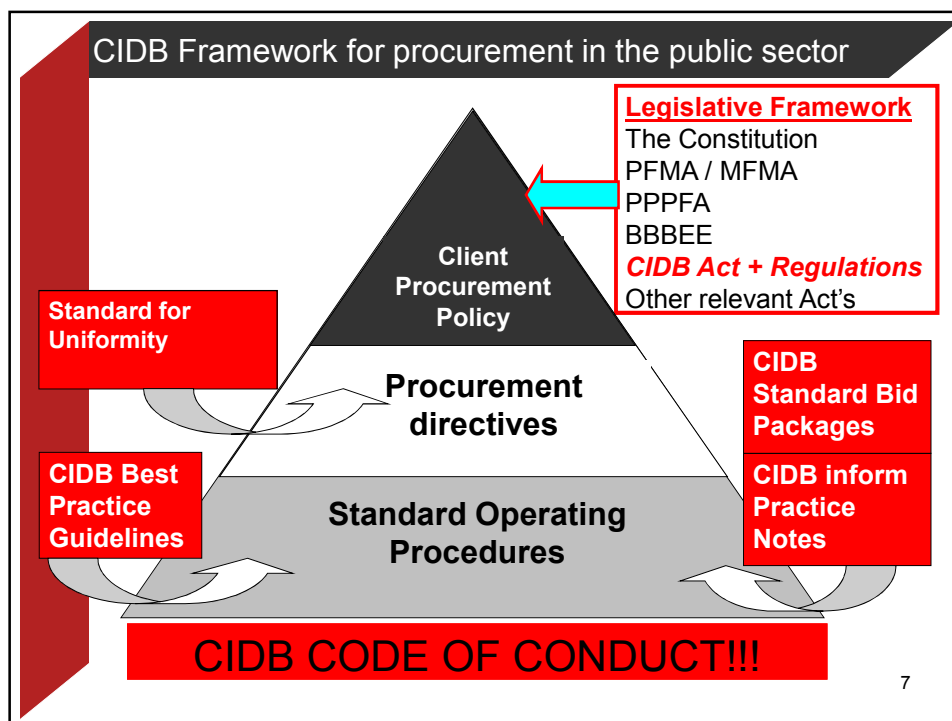
- **Code of conduct for the parties engaged in construction procurement**
 - ✓ Behave equitably, honestly and transparently.
 - ✓ Discharge duties and obligations timeously and with integrity.
 - ✓ Comply with all applicable legislation and associated regulations.
 - ✓ Satisfy all relevant requirements established in procurement documents.
 - ✓ Avoid conflicts of interest.
 - ✓ Not maliciously or recklessly injure or attempt to injure the reputation of another party.

5

CIDB Regulations: Part IV

- CIDB Standard for Uniformity in Construction Procurement **establishes minimum requirements for:**
 - the **solicitation/advertising** of tender offers;
 - the manner in which **quality** is to be incorporated in procurement documents;
 - the **formatting and compilation** of procurement documents; and
 - the application of the **Register of Contractors (RoC)** to public sector contracts.

6



Case study 1

- Major parastatal reported for non-compliance to CIDB Regs by an aggrieved contractor (email)
- CIDB registers complaint (database)
- CIDB Compliance Unit conducts preliminary field work
- Case referred to CIDB Forensics Project Team (external)
- (SEE PART V OF CIDB REGULATIONS FOR PRESCRIBED PROCEDURE)
- Investigation (interviews, tender adjudication report, audit trail of information)
- Report finding (summarised):
 - **Charge 1: Negligently evaluating and awarding a contract**
 - **Charge 2: Treating Tender A differently to Tenderer B in the evaluation phase**
 - **Charge 3: Not declaring tenders non-responsive under circumstances where you have prescribed to do so**
- Independent Investigation Committee; hearings held: **Adi Alterim Partem** Rule

9

Case study 1

- Major parastatal reported for non-compliance to CIDB Regs by an aggrieved contractor (email)
- CIDB registers complaint (database)
- CIDB Compliance Unit conducts preliminary field work
- Case referred to CIDB Forensics Project Team (external)
- (SEE PART V OF CIDB REGULATIONS FOR PRESCRIBED PROCEDURE)
- Investigation (interviews, tender adjudication report, audit trail of information)
- Report finding (summarised):
 - **Charge 1: Negligently evaluating and awarding a contract**
 - **Charge 2: Treating Tender A differently to Tenderer B in the evaluation phase**
 - **Charge 3: Not declaring tenders non-responsive under circumstances where you have prescribed to do so**
- Independent Investigation Committee; hearings held: **Adi Alterim Partem** Rule

**OUTCOME: FINE ISSUED +
RECOVERY OF CIDB COSTS
ASSOCIATED WITH THE
INVESTIGATION
HOORAY!!!**

10

Case Study 2

- Public Sector Client taken to Western Cape High Court by an aggrieved (Grade 8) contractor
- Tender advertised for a Grade 8 (= R100 M) for class EE (Electrical Engineering)
- 1 week later, an addendum was issued to accept tender offers from Grade 6 (= R10 M) or higher???
- Tender was adjudicated by a firm of **consulting engineers**:
 - Tenderer A (Grade 6 EE) tendered R64 175 353.71
 - Tenderer B (Grade 8 EE) tendered R64 425 632.92
- Tender awarded to Tenderer A; Grade 6EE; Contract Sum was **640% (R54 M) over his tender value range!!!!!!!!!!!!!!**
- Tender evaluation report claimed this to be “reasonable”
- CIDB Practice Note 3 “reasonable” to be between 10-15% but considers **20% as unreasonable!!!**

11

Case Study 2: Court ruling

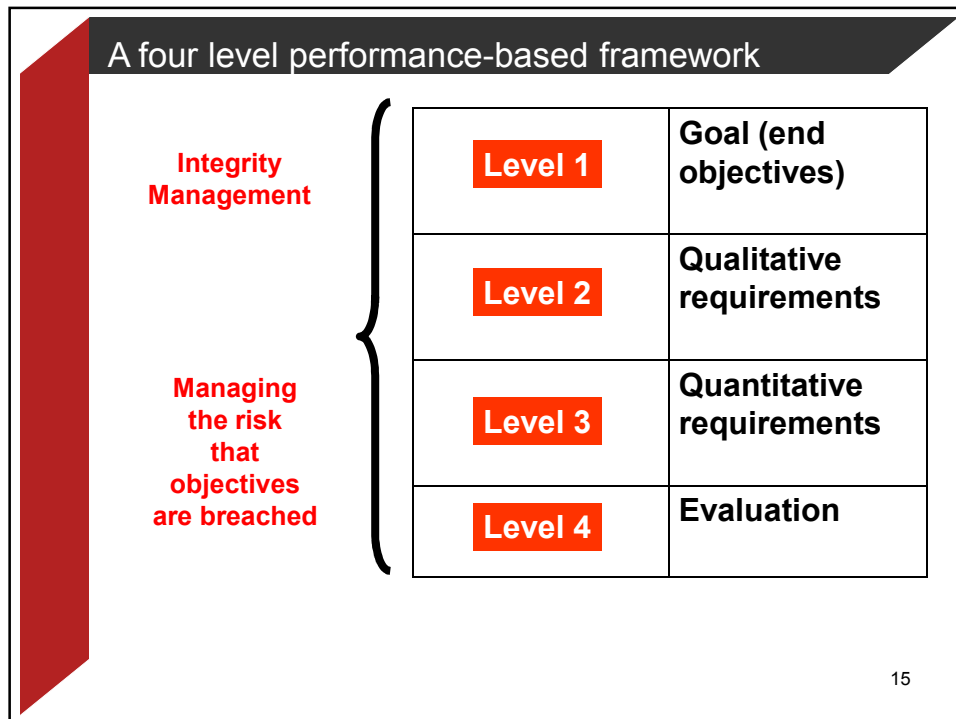
- Decision by the client *to award to Grade 6 EE by an unreasonable margin of 640% over his designated tender value range* was set aside
- Client was ordered to “**consider and have regard for the provisions of the CIDB Regulations in any evaluation of tenders received by it from tenders who are registered but who have tendered outside of their maximum tender value range as contemplated in Regulation 17**”
- Cost order for the Clients account (including the costs of two counsel).

12

SIMPLE RULES TO MEASURE INTEGRITY IN THE CONSTRUCTION PROCUREMENT PROCESS

13

Performance based Procurement Framework	
Goal (end objectives) Level 1	System to be fair, equitable, transparent, competitive and cost effective. promote additional objectives of procurement itself. <div style="border: 1px solid black; background-color: yellow; padding: 2px; width: fit-content; margin-left: auto;">Broad statement of intent</div>
Qualitative requirements Level 2	Define in qualitative terms what is fair, equitable, transparent, competitive and cost effective. additional objectives to the procurement itself. <div style="border: 1px solid black; background-color: yellow; padding: 2px; width: fit-content; margin-left: auto;">REQUIREMENTS to reach the end objective</div>
Quantitative requirements Level 3	Rule based system established in the Standard for Uniformity in Procurement which incorporates conditions of tender and contract. calls for expressions of intent. <div style="border: 1px solid black; background-color: yellow; padding: 2px; width: fit-content; margin-left: auto;">Those RULES that enable the QUALITATIVE requirements to be satisfied with integrity</div>
Evaluation Level 4	Confirmation at control point in the procurement process that the rules have been followed. <div style="border: 1px solid black; background-color: yellow; padding: 2px; width: fit-content; margin-left: auto;">CONFIRMATION that goals and objectives have been met</div>



Transparency in procurement

- A **transparent** procurement system is characterised by
 - the documentation of clear rules
 - the means to verify that those rules are adhered to
- Increased **transparency** in government procurement systems will
 - reduce corrupt and irregular practices
 - improve the predictability of the procurement objectives / goals

16

CIDB Forensics Contract

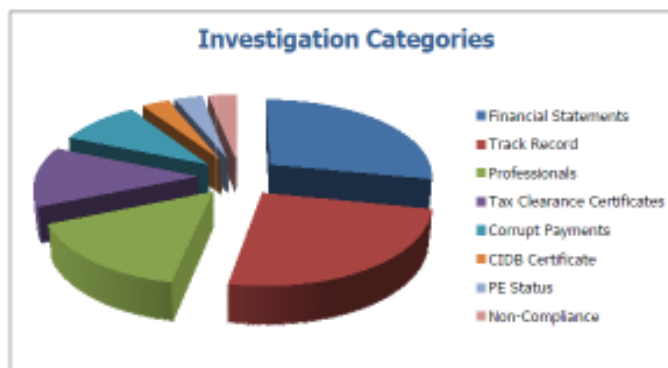
- CIDB Anti fraud and corruption initiative:
 - Hotline Number: 0800 112 452
 - Website: www.tipoffsatwork.co.za
 - Email: cidb@tipoffsatwork.co.za
 - Toll free fax line: 0880126448084
- CIDB's **zero tolerance attitude** towards fraud, corruption and any unethical behavior.
- **Immediate dismissal of CIDB officials** found to be participating in unethical behaviour – charge of criminal behaviour
- Project in operation since 2007.
- www.cidb.org.za
 - List of offenders
 - Court rulings on CIDB non-compliance



17

Non - Compliance to CIDB Regulations: Registers

Fraud, corruption and compliance reporting and investigation services: CIDB



18

Corruption in procurement

- Loss of economy and inefficiency in procurement
- Exclusion of qualified tenderers from competing for tenders
- Unfair and inequitable treatment of tenderers
- Lack of integrity in the procurement process
- Subjective and biased scoring of evaluation criteria
- Lack of transparency in the procurement process
- Failure to achieve secondary objectives

How fair, equitable, transparent, competitive and cost effective is your procurement system?

19

Summary:

- CIDB alliance partnership with the Office of the Auditor-General
- Office of the AG will be conducting Performance Audits on infrastructure projects based on CIDB requirements for compliance
 - Transparency
 - Reduce transaction costs
 - Accountability for decisions
 - Predictability of procurement outcomes
- CIDB Monitoring and Reporting Framework (name & shame)

20

MEC Robin Carlisle

- Regulator + Enforcer
- Industry.....protect CIDB
- CIDB treads without fear or favor
- Prevent contract trading / tender trading
- Predictable outcomes....starts with good planning
- CIDB looking for partnerships to eradicate fraud and corruption in the construction industry...let's talk!!

21

THANK YOU – THE END



22