

Construction industry Development Regulations, 2004 (as amended)
– As at 14 November 2008-

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 R200 000.00 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 every provincial department responsible for public works, roads or transport or any combination thereof, on 30 August 2005;
 - (iv) every provincial department on 30 August 2005;
 - (v) every national department not mentioned above on 30 September 2005;
 - (vi) every public entity on 30 November, 2005;
 - (vii) every metropolitan council not mentioned above on 15 March 2006;
 - (viii) a municipality, which is not a metropolitan council, classified as a high capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 April 2006;
 - (ix) a municipality classified as a medium capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 July 2006;
 - (x) a municipality classified as a low capacity municipality in Government Notice No. 733 of 1 July 2004 “Local Government: Municipal Finance Management Act 2003 Delays and Exemptions”, on 30 November 2006,
- and the above organs of state must apply the register of contractors to their procurement processes as contemplated in section 16(4) of the Act from the above dates and in accordance with Part IV of these Regulations; and
- (b) Part III commences in relation to all private sector projects of which the project value exceeds R3 million on 30 August 2005.”

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- *Paragraphs (b), (c) and (d) were amended by Government Notice No. R.1333 of 12 November 2004, published in Government Gazette No. 26991 of 12 November 2004 and commenced on that date.*
- *Notice replaced by Government Notice No. 751 of 22 July 2005 and replacement commenced on that date.*

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<i>Amendments</i>		
<i>Government Notice Number</i>	<i>Gazette Number</i>	<i>Commencement Date</i>
<i>R.1333 of 12 November 2004</i>	<i>26991 of 12 November 2004</i>	<i>12 November 2004</i>
<i>R.751 of 22 July 2005</i>	<i>27831 of 22 July 2005</i>	<i>22 July 2005</i>
<i>R. 842 of 18 August 2006</i>	<i>29138 of 18 August 2006</i>	<i>18 August 2006</i>
<i>R.1121 of 23 November 2007</i>	<i>30510 of 23 November 20</i>	<i>1 January 2008</i>
<i>R8986 of 14 November 2008</i>	<i>31603 of 14 November 2008</i>	<i>1 January 2009</i>

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 CIDB;

“**available capital**” means the amount calculated in accordance with regulation 11(3);

Definition inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

“**code of conduct**” means the code of conduct published by CIDB 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 6;

Definition of “employable capital” deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

“**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;

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“financial sponsorship” means a financial sponsorship contemplated in regulation 7(10);

Definition amended by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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

“net asset value” means the sum of a person’s equity, retained income and shareholders or members loans;

Definition inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Definition of “NHBRC” deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

“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).

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2(A). Wherever in these Regulations financial statements are referred to, it means financial statements prepared in accordance with Generally Accepted Accounting Practice (GAAP) or the International Financial Reporting Standard (IFRS), and certified by a person who is by law required to certify those financial statements, if any.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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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;

Paragraph (g) deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (h) any prohibition or restriction in terms of these Regulations or any other legislation, whether in South Africa or in another country, regulating procurement of the services or goods from a registered contractor or any principals of that contractor, prohibiting that contractor to submit a tender offer to an organ of state or authorising an organ of state to reject a tender offer from that contractor;

Paragraph substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (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;
- (k) the expiry date of the contractor's tax clearance certificate.

Paragraph inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Exemption

4. (1) Any contractor who is registered as a homebuilder in terms of section 10 of the Housing Consumer Protection Measures Act, 95 of 1998, read with the General Regulations Regarding Housing Consumer Protection Measures, R.1406, published by *Gazette* No. 20658 of 1 December 1999, is exempt from registration in terms of these Regulations for the purpose of construction works in relation to the provision of a home as contemplated in those Regulations.

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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(2) A contractor who undertakes a construction works contract substantially consisting of the provision of labour is exempt from registration in terms of these Regulations.

Regulation substituted by Government Notice 751 of 22 July 2005, published in Government Notice No. 27831 of 22 July 2005.

(3) A contractor who undertakes a construction works contract substantially consisting of the provision of supplies, is exempt from registration in terms of these Regulations.

Subregulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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 B-BBEE recognition level of a contractor in terms of an applicable code of good practice issued in terms of section 9 of the Broad Based Black Economic Empowerment Act, 53 of 2003,

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).

Paragraph (d) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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 in contractor grading designations 2 to 9

Heading substituted by Government Notice 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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7. (1) A contractor who wishes to be registered in terms of these Regulations in the categories of registration that relate to contractor grading designations 2 to 9 as contemplated in regulation 12(1) (Table 1) must on the approved form apply to the CIDB for that registration.

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(2) A contractor must apply to the CIDB 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, complete financial statements of the contractor for the two financial years preceding the application;

Paragraph (b) was amended by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

Paragraph (b) was substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(c) if so requested by the CIDB, where the financial statements of a contractor are not audited, supporting evidence of that contractor's turnover as set out the South African Revenue Services Form VAT 201 (return for value added tax) and proof of payment of that value added tax;

Paragraph (c) was substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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 and certified copies of the shareholders' certificates of the company;

(dA) in the case of a trust, a copy of trust deed as contemplated in the Trust Property Act, 1988 (Act No. 58 of 1988);

Paragraph (dA) was inserted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

(e) an original tax clearance certificate issued to the contractor by the South African Revenue Service, or in the case of a foreign enterprise, which has not yet performed any contracts within the Republic of South Africa, proof that it has paid all taxes due by it to the government of its country of origin;

Paragraph (e) was substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(f) certified copies of the identity documents of the principal or principals of the

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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, proof of financial sponsorship of the contractor as contemplated in subregulation (10);

Paragraph (g) was substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (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 Electrical Engineering – designation EB class of works a certified copy of the current certificate of registration issued by the Electrical Contracting Board of South Africa;

Paragraph (i) was substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (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;

- (m) any other information required by the CIDB in relation to the category of registration of a contractor; and

- (1A) (i) in a case referred to in regulation 11(4)(ii), (iii), (iv), (v) or (vii), a cidb resolution of the company or member resolution of the close corporation concerned sanctioning the change of name, reconstruction, amalgamation, takeover or conversion;
- (ii) in the case of a scheme of arrangement referred to in regulation 11(4)(vi), the court order sanctioning the scheme of arrangement; or
- (iii) in the case of a change in membership or members' interest of a close corporation as contemplated in regulation 11(4)(viii), the certificate referred to in section 31 of the Close Corporations Act, 69 of 1984, stating the current percentage of each member's interest in the corporation.

Paragraph 1A inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (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 CIDB by mail or by hand and

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the application is not considered to have been duly completed as contemplated in regulation 10(3), until such submission has been received by the CIDB.

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

(7) The CIDB 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.

(8) If a contractor does not fully comply with a request from the CIDB to provide further information in relation to his or her application within 60 days from the date of that request, the CIDB may cancel the application and must refund the annual fees paid by the contractor.

Expression “90 days” substituted by “60 days” by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(9) In the case of an application for registration by a contractor whose supporting documents are not in English, that application must be accompanied by an English translation of those documents, prepared by a sworn translator.

Subregulations (8) and (9) were inserted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

(10) A financial sponsorship referred to in these Regulations must be a collectable financial guarantee by one person to another (the beneficiary) -

- (a) for a fixed amount;
- (b) is available to the beneficiary as and when required;
- (c) to support the operations of the contractor concerned to complete his or her projects;
- (d) if applicable, available to a third person, such as a bank, to advance funds or such as a supplier, to advance a line of credit;
- (e) If applicable, in a form acceptable to any financial institution in South Africa as defined in the Financial Services Board Act, 97 of 1990; and
- (f) If not provided by a financial institution, to an amount which does not exceed 15% of the sponsor's net asset value as determined from the sponsor's latest financial statements.

(11) The registration particulars reflected on the register of contractors on the CIDB's website serves as the registration certificate as contemplated in section 16(7) of the Act.**7A.**

Subregulations (10) and (11) inserted by Government Notice 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

7A. Application for and registration in contractor grading designation 1

- (1) A contractor who wishes to be registered in terms of these Regulations in contractor grading designation 1 as contemplated in regulation 6 may apply in the approved form to the CIDB to be registered in that contractor grading designation.

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- (2) An application referred to in subregulation (1), must be accompanied by -
- (a) 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;
 - (b) 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 or the Close Corporations Act, 1984, as the case may be and certified copies of the shareholders' certificates of the Company;
 - (c) an original tax clearance certificate issued by the South African Revenue Service;
 - (d) if an application relates to the Electrical Engineering – designation EE class of works, a certified copy of his or her electrical contractor licence issued by the Electrical Contracting Board of South Africa; and
 - (e) any other information required by the CIDB in relation to the category of registration of a contractor.
- (3) If an application in terms of this regulation is made on the official CIDB website, the supporting documentation referred to in subregulation (2) must be submitted to the CIDB by mail or by hand and the application is not considered to have been duly completed until that submission has been received by the CIDB.
- (4) The CIDB 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.
- (5) If a contractor does not fully comply with a request from the CIDB to provide further information in relation to his or her application within 90 days from the date of that request, the CIDB may cancel the application.
- (6) In the case of an application for registration by a contractor whose supporting documents are not in English, that application must be accompanied by an English translation of those documents, prepared by a sworn translator.
- (7) A person appointed in terms of the Act as an administrator must enter -
- (a) the particulars from the supporting documents listed in subregulation (2);
 - (b) the address and contact particulars,
- of the applicant on the registration system.
- (8) If the applicant has not completed a registration form the administrator must print a declaration containing the information captured in terms of subregulation (7) and the applicant must, after ascertaining that the information captured on the registration system is correct, sign that declaration.
- (9) The administrator must retain the registration form or declaration, as the case may be, together with supporting documentation provided in terms of subregulation (2).
- (10) The administrator must, on payment of the administration fee -
- (a) register the applicant as a contractor on the register of contractors;
 - (b) update the register of contractors accordingly; and

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(c) issue to the contractor a receipt, which contains the contractor registration number for the payment of the administration fee.

(11) The registration particulars reflected on the register of contractors on the official CIDB website serves as the registration certificate as contemplated in section 16(7) of the Act.

(12) Regulations 7 and 10 to 12 and 14 do not apply to an application for registration in the contractor grading designation 1.

Regulation 7A was inserted by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007

Application for amendment of category status

8. (1) An application in terms of section 17(2) of the Act must be done on the approved form and the contractor concerned must ensure that any information required in terms of regulation 7(4) that has changed since that contractor's first application or latest confirmation of particulars, is supported by the evidence required in terms of regulation 7(4).

(2) Subject to subregulation (1), regulations 7 and 10 apply to an application in terms of section 17(2) with the necessary changes.

Regulation as amended,

- *Paragraph (1)(a) substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.*
- *Paragraph (1)(dA) substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.*
- *Subregulations (1A) and (1B) inserted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006,*

substituted by Government Notice No 8986 of 14 November 2008, published Government Gazette No 31603 of 14 November 2008.

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 of contractor in contractor grading designation 2 to 9

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10. (1) The CIDB must appoint an assessor from its staff complement or a person who is not employed by the CIDB and who has relevant expertise, to evaluate every application for registration in terms of these Regulations.

(2) Subject to subregulations (4) and (5), the assessor 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.

(3) On registration, the assessor must certify on the register of contractors that the contractor is registered and that certification serves as the registration certificate referred to in section 16(7) of the Act.

(4) The assessor may, if he or she decides on a category of registration lower than that applied for by the contractor, register the applicant in that category and notify him or her of such decision within 21 working days.

(5) The contractor may, if the contractor does not agree with the categorization decided on by the assessor, subject to section 3 of the Promotion of Administrative Justice Act, 3 of 2000, submit reasons to the assessor for reviewing the assessment.

(6) The registration of a contractor is subject to the conditions that the contractor concerned-

- (a) complies with the code of conduct for contractors; and
- (b) subject to regulations 8 and 36, complies with the requirements in terms of these Regulations for the category in which that contractor is registered.

Regulation as amended,

- ***Subregulation (4) substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.***
- ***Subregulation (7) inserted by Government Notice 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2008,***

substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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 either in accordance with method A as set out in subregulation (2A) or in accordance with method B as set out in subregulation (2B), but method B may not be applied to an application for registration in grades 2 to 4.

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(2A) Method A for determining the financial capability of a contractor comprises establishing whether-

- (a) the contractor's best annual turnover over the two financial years immediately preceding the application equals or exceeds the minimum annual turnover in the third column of Table 1 determined in relation to the financial capability designation contemplated in regulation 12(1);
- (b) the contractor during the five years immediately preceding the application has completed at least one construction works contract of which the total contract value exceeds the amount in the fourth column of Table 1 of the financial capability referred to in regulation 12(1); and
- (c) the contractor has available capital calculated in accordance with subregulation (3), equal to or exceeding a value determined in relation to the financial capability designation as contemplated in regulation 12(1).

(2B) Method B for determining the financial capability of a contractor comprises establishing whether the contractor has available capital, calculated in accordance with subregulation (3), equal to or exceeding the value determined in relation to the financial capability designation as contemplated in regulation 12(1).

Subregulation (2, as amended,

- ***Paragraph (2)(b) amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005,***

substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(3) Available capital is calculated by adding any financial sponsorship to the sum of the net asset value of a contractor as indicated in the contractor's financial statements, and financial sponsorship—

- (a) where the sponsor is a registered contractor or owns 50 percent or more of the applicant contractor, may constitute up to 100 percent of the total amount of required available capital;
- (b) where the sponsor is not a registered contractor and owns 25 percent or more of the applicant contractor, may not exceed 75 percent of the total amount of the required available capital; and

where the contractor is not a registered contractor and the sponsor owns less than 25 percent of the applicant contractor, may not exceed 50 percent of the total amount of the required available capital.

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(3A) Despite anything to the contrary in these Regulations, if an application is made in terms of these Regulations –

- (i) in the case of a company, within 6 months from the end of its financial year; and

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- (ii) in the case of a close corporation, within 4 months from the end of its financial year,

the financial statements of the two years immediately preceding the last financial year may be taken into account.

Subregulation as amended by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006, substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(4) For the purpose of determining the contractor grading designation of a contractor, the records of one contractor may be transferred to another contractor and treated as if it were the same entity for the purpose of assessment in the case of -

- (a) the first contractor being a sole proprietor, partnership or trust who establishes a company or close corporation in terms of the Companies Act, 1973 or the Close Corporations Act, 1984;
- (b) a change of name of a company;
- (c) the reconstruction of a company;
- (d) the amalgamation of companies;
- (e) the takeover of a company;
- (f) a scheme of arrangement in terms of sections 311 to 313 of the Companies Act, 1973;
- (g) the conversion of a company to a close corporation in terms of section 27 of the Close Corporations Act, 1984; and

a change in membership or members' interests of a close corporation..

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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

- (a) in the case of Method A as contemplated in subregulation (2A), -
 - (i) the contractor employs the requisite number of qualified persons as contemplated in regulation 12(4) in the class of works as indicated in Schedule 3, for which the contractor wishes to register;
 - (ii) the contractor has satisfied the requirements contemplated in regulation 12(5) or 12(8) in relation to any specific class of construction works; and
 - (iii) the contractor has during the five years immediately preceding the application completed at least one construction works contract in the category of construction works for which the contractor wishes to register, of which the value exceeds the amount of that works capability designation as contemplated in regulation 12(7); or
- (b) in the case of Method B contemplated in subregulation (2B)-

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- (i) the contractor employs the requisite number of qualified persons as contemplated in regulation 12(4) in the class of works as indicated in Schedule 3, for which the contractor wishes to register; and
- (ii) the contractor has satisfied requirements contemplated in regulation 12(5) or 12(8) in relation to any specific class of construction works..

Subregulation, as amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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

Designation	Upper limit, (R) of tender value range	Method A[subregulation (2A)]			Method B [subregulation 2B)]
		Best Annual Turnover (R) (2 year)	Largest contract(R) (5 year)	Available capital (R)	Available capital(R)
1	200,000	-	-	-	N/A
2	650,000	-	150,000	-	N/A
3	2,000,000	1,000,000	500,000	100,000	N/A
4	4,000,000	2,000,000	1,000,000	200,000	N/A
5	6,500,000	3,250,000	1,600,000	650,000	1,300,000
6	13,000,000	7,800,000	3,250,000	1,300,000	2,600,000
7	40,000,000	24,000,000	10,000,000	4,000,000	8,000,000
8	130,000,000	90,000,000	32,500,000	13,000,000	26,000,000
9	No Limit	270,000,000	100,000,000	40,000,000	80,000,000

Table 1, amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No.8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 November 2008.

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

Subregulation (1)(a) deleted by Government Notice No 8986 of 14 November 2008, published in Government gazette No 31603 of 14 November 2008.

- (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.

Subregulation (2)as amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005 deleted by Government Notice No 8986 of 14

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November 2008, published in Government gazette No 31603 of 14 November 2008.

Subregulation (3) deleted by Government Notice No 8986 of 14 November 2008, published in Government gazette No 31603 of 14 November 2008.

(4) The minimum number of qualified persons employed permanently full time or the equivalent number of qualified persons employed on a part time basis in relation to a works capability designation are as indicated below in Table 4A for method A as contemplated in regulation 11(2A), and as indicated below in Table 4B for method B as contemplated in regulation 11(2B), respectively:

TABLE 4A

Works Capability		Minimum Number of Full-time Qualified Persons Required for Registration in a Category of Construction Works				
Designation	Maximum (R) Value of Contract that a Contractor is Considered Capable of Performing	General Building (GB)	Civil Engineering (CE)	Electrical Engineering (EB and EP)	Mechanical Engineering (ME)	Specialist Works (SP)
1	200 000	-	-	-	-	-
2	650 000	-	-	-	-	-
3	2 000 000	-	-	-	-	-
4	4 000 000	-	-	-	-	-
5	6 500 000	-	-	-	-	-
6	13 000 000	-	-	1	1	1
7	40 000 000	1	1	2	2	2
8	130 000 000	2	2	3	3	3
9	No limit	3	3	4	4	4

TABLE 4B

Works Capability		Minimum Number of Full-time Qualified Persons Required for Registration in a Category of Construction Works				
Designation	Maximum (R) Value of Contract that a Contractor is Considered Capable of Performing	General Building (GB)	Civil Engineering (CE)	Electrical Engineering (EB and EP)	Mechanical Engineering (ME)	Specialist Works (SP)
1	200 000	N/A	N/A	N/A	N/A	N/A
2	650 000	N/A	N/A	N/A	N/A	N/A
3	2 000 000	N/A	N/A	N/A	N/A	N/A
4	4 000 000	N/A	N/A	N/A	N/A	N/A
5	6 500 000	1	1	1	1	1
6	13 000 000	2	2	2	2	2
7	40 000 000	4	4	4	4	4
8	130 000 000	6	6	6	6	6
9	No limit	8	8	8	8	8

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Subregulation (4), as amended by Government Notice No 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Table 4 as amended by Government Notice No 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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

Subregulation (6) deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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 5 Years In The Class Of Construction Works Applied For (R)
Designation	Maximum Value Of Contract That A Contractor is Considered Capable of Performing (R)	
1	200 000	
2	650 000	150,000
3	2 000 000	500,000
4	4 000 000	1,000,000
5	6 500 000	1,600,000
6	13 000 000	3,250,000
7	40 000 000	10,000,000
8	130 000 000	32,500,000
9	No limit	100,000,000

Table 5 as amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No. 8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 November 2008.

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

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- (a) for the classes of construction works “Civil Engineering”, “Electrical Engineering” and Mechanical Engineering” is registered as a professional in accordance with the Engineering Profession Act, 46 of 2000 or the Project and Construction Management Professions Act, 48 of 2000; and
- (b) for the classes of construction works “General Building” and “Specialist Works” is registered as a professional in accordance with the-
 - (i) the Project and Construction Management Professions Act, 48 of 2000;
 - (ii) the Engineering Profession Act, 46 of 2000;
 - (iii) the Architectural Profession Act, 44 of 2000;
 - (iv) the Quantity Surveying Profession Act, 49 of 2000; or
 - (v) the Landscape Architectural Profession Act, 2000 45 of 2000.

Subregulation substituted Government Notice no 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

CIDB to identify potential emerging enterprise status

13. The CIDB 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.

Regulation 14 deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Table 6 as amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Regulation 15 deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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Foreign enterprise

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

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

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

Regulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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

Table 8 as amended by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005, substituted by Government Notice No. 8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 November 2008.

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PART III
REGISTER OF PROJECTS

Registration of projects

18. (1A) Despite the values determined in Government Notice No. 692 of 9 June 2004, every project consisting of a single construction works contract-

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

must be registered in accordance with this Part.

Subregulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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 CIDB 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 CIDB 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 CIDB.

Exemption

19. Any project consisting of a contract entered into with a client or employer that relates only to construction works-

Paragraph deleted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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- (b) undertaken in a mining area as defined in the Petroleum and Mineral Resources Development Act, 2002 (Act 28 of 2002), and which form part of excavations below surface bounded by the shaft collar, or portal to the adit of an underground mine, or by the pit rim for open cast mines, and including the construction of a shaft collar, portal or pit rim;
- (c) for any maintenance required to maintain all plant infrastructure in operational condition and any plant modifications necessary for the optimisation of such plant associated with continuous process systems involving chemical works, metallurgical works, oil and gas wells, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances and other chemical processes; or
- (d) for installation, repair, maintenance or alteration of mechanical materials handling systems and lifting machinery in relation to movement of containers and bulk material.

is exempt from these regulations.

Regulation 19 was substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

Paragraphs (c) and (d) inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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 CIDB 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

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(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 CIDB in the format determined by the CIDB.

(2) An employer must notify the CIDB 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 CIDB 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 CIDB 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 CIDB in terms of section 5 of the Act.

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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 and in relation to construction works contracts of which the value exceeds R30 000.00.

Regulation 23 was substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

Preparation for construction procurement

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

–
Expression substituted by Government Notice no 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

- (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; or
- (b) if applicable, the Municipal Supply Chain Management Regulations, published by Government Notice No. 868 of 2005, in *Gazette* number 27636 of 30 May 2005; and
- (c) the Standard for Uniformity in Construction Procurement, published by CIDB Notice No. 62 of 9 June 2004 in *Gazette* No.26427 of 9 June 2004.

Regulation 24 was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

Invitation of tender or expression of interest for construction works contracts

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

Subregulation (1) was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

and

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Subregulation (1) substituted by Government Notice no 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(1A) Notwithstanding subregulation (1), the tender offer or expression of interest of a contractor who is not registered as contemplated that subregulation, but who is capable of being so registered prior to the evaluation of those submissions may be evaluated, but in the case of expressions of interest, the contractor concerned must be capable of being so registered within 21 working days after the closing date for those submissions.

Subregulation (1A) was inserted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

- (1B) Where a contract involves construction works over an agreed number of years -
- (a) on an “as and when required” basis;
 - (b) of a routine nature; or
 - (c) grouped into identifiable and similar components where an instruction to proceed to the construction of the next component is conditional on the successful completion of the previous component,

the value of that contract may for the purpose of subregulation (1), be taken at its annual value.

(2) Despite subregulation (1A), 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.

Reference to subregulation 2 substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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, provided that if more than one class of works equally describes the construction work for which tender offers are invited, then an alternative class of work may also be selected in terms of this subparagraph, but not more than two classes of work may be so selected; and

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- (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 where that estimate is within 20 percent of the lower limit of that tender value range, the tender value range immediately below that tender.

Paragraph (a) was substituted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

- (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 either in accordance with table 9 or in accordance with regulation 11 but is calculated based on-

- (a) the sum of the annual turnover of all the members to the joint venture;
- (b) the sum of the available capital of all the members to the joint venture; and
- (c) the total number of equivalent full-time qualified persons in the construction works category in which the joint venture wishes to be registered,

but where-

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

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

where:

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

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

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

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

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

TABLE 9

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

Subregulation (6) was substituted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

And

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Subregulation (6) substituted by Government Notice No. 8986 of 14 November 2008, published in Government Gazette No. 31603 of 14 January 2008.

(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.

(7A) An organ of state may subject to its procurement policy and notwithstanding anything to the contrary contained in this regulation, evaluate and award a tender offer from a tenderer who is registered but who tendered outside of his or her tender value range as contemplated in regulation 17, provided that –

- (a) the margin with which the tenderer exceeded his or her tender value range contemplated in regulation 17, is reasonable;
- (b) the award of the contract does not pose undue risk to the organ of state;
- (c) the tender offer in all other aspects comply with these Regulations; and
- (d) the report referred to in regulation 21 or 38(5) and (6), indicates whether this subregulation was applied in the award of the tender.

Subregulation (7A) was inserted by Government Notice 842 of 18 August 2006, published in Government Gazette No. 29138 of 18 August 2006.

(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.

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Restriction to participate

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

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

for a period not exceeding ten years.

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

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

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

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

Regulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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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 CIDB 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 CIDB in writing to remove his or her name from the register; or
 - (c) has been found guilty in terms of regulation 29 of any non-compliance with Code of Conduct.

Paragraph (c) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Application of code of conduct

27A. The code of conduct applies to all construction-related procurement and all participants involved in the procurement process, from the application for registration as a contractor, through to the tender process and the registration and completion of a project, including participation in the best practice project assessment scheme and the best practice contractor recognition scheme.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Preliminary investigation of complaint or suspicion

- (1) 28. (1) If the CIDB has –

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

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

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

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

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

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

(4) If, after the verification contemplated in subregulation (3), the investigation officer finds that any of the criteria in that subregulation have not been met, he or she must inform the CIDB thereof, together with the reasons for his or her finding.

(5) Upon receipt of the finding of the investigation officer contemplated in subregulation (4), the CIDB must inform the complainant of its finding, if the identity of the complainant is known.

(6) If the investigating officer is satisfied that any of the criteria referred to in subregulation (3) have been met, he or she must -

- (a) investigate the matter; and
- (b) obtain evidence to determine whether the CIDB may take any action as contemplated in the Act and these Regulations against the person implicated by the complaint or suspicion.

(7) An investigating officer may not question the person implicated by the complaint or suspicion unless he or she informs that person that he or she -

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

(8) The investigating officer must, after the conclusion of the investigation, submit a report to the CIDB which contains at least -

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- (a) the evidence obtained;
- (b) his or her conclusions and the reasons therefore;
- (c) whether, in the opinion of the investigating officer, the person implicated by the complaint or suspicion or any other person failed to comply with the provisions of the code of conduct; and
- (d) a recommendation regarding the action that the CIDB should take.

(9) The CIDB must, after due consideration of the report of the investigating officer referred to in subregulation (8), act in accordance with the recommendation of the investigating officer if the CIDB is satisfied that sufficient grounds exist for such action.

(10) If an organ of state, other than the CIDB, undertakes an investigation and the finding of that organ of state indicates that a person acted contrary to or has omitted to act in terms of the code of conduct, that organ of state must provide the CIDB with its findings and all other documentation relevant to its investigation.

(11) Upon receipt of the findings and documentation contemplated in subregulation (10) the CIDB must refer the matter to the investigating officer appointed by the CIDB as contemplated in subregulation (1).

(12) The investigation officer must, within 30 days of the referral by the CIDB referred to in subregulation (11) submit a report to the CIDB which contains at least -

- (a) a statement on whether, in the opinion of the investigating officer, the person implicated by the investigation of the organ of state has acted contrary to or has omitted to act in terms of the code of conduct or failed to comply with the provisions of the Code of Conduct; and

a recommendation regarding the action that the CIDB should take.

Regulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Formal inquiry

29. (1) If, after due consideration of the report of the investigation officer referred to in regulation 28(8) or 28(12), the CIDB is satisfied that sufficient grounds exist for the institution of a formal inquiry into the complaint or suspicion, it must -

- (a) notify the person referred to in regulation 28(8)(c) or 28(12)(a), in this regulation hereafter referred to as the respondent, in writing –
 - (i) of its decision to institute a formal inquiry;
 - (ii) of the details and nature of the complaint or suspicion that was investigated and the charges;
 - (iii) that the respondent must, within 21 days after receipt of the notification, in writing-
 - (aa) admit or deny the charges; and
 - (bb) indicate whether he or she requests the assistance of an interpreter;

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- (b) attach an extract of Part V of these Regulations to the notice referred to in paragraph (a); and
- (c) appoint a committee as contemplated in subregulation (6), hereafter referred to as the investigating committee.

(2) If the charges referred to in subregulation (1)(a)(ii) relate to a possible transgression of section 18 of the Act, the CIDB must serve a copy of that notice on the client or employer with whom the respondent has entered into, or attempted to enter into a contract to perform the construction works concerned.

(3) The CIDB must, after the expiry of the 21 day period referred to in subregulation (1)(a)(iii), notify the respondent in writing -

- (a) of the date, time and place where the formal inquiry will be held by the investigating committee, irrespective of whether the respondent replied to the notice or not, or whether he or she admitted or denied the charges;
- (b) that should the respondent fail to appear, the CIDB may request the investigating committee to take cognizance of the evidence in the respondent's absence;
- (c) that should the investigating committee grant the CIDB's request contemplated in paragraph (b), the CIDB may submit the evidence to the investigating committee; and
- (d) that the CIDB may request the investigating committee to make a finding in the respondent's absence based on the evidence at hand and to decide on an appropriate sanction;

(4) The investigating committee may find the respondent guilty of the charge and sanction him or her in accordance with subregulation (15) without hearing any evidence if the respondent admits that he or she is guilty of the charge as contemplated in subregulation (1)(a)(ii) and -

- (a) provides mitigating circumstances to the investigating committee; or
- (b) if the respondent does not provide mitigating circumstances to the investigating committee, but the investigating committee is satisfied that a reasonable time had lapsed for the respondent to provide mitigating circumstances and the respondent had not done so despite being notified that the proceedings may continue in his or her absence if he or she fails to provide the investigating committee with mitigating circumstances.

(5) If the respondent, after being duly notified by the CIDB as contemplated in subregulation (3), fails to attend the proceedings, the investigating committee may proceed with the formal inquiry in the absence of the respondent if -

- (a) there is no information at the disposal of the investigating committee to show sufficient cause for the respondent's failure to attend the proceedings;
- (b) the CIDB and the respondent had not reached an agreement regarding motion proceedings; and
- (c) it is fair, reasonable and in the interest of justice to do so in the circumstances.

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(6) The investigating committee appointed by the CIDB in terms of subregulation (1)(c) must consist of at least -

- (a) two persons who have expertise in the fields relevant to the inquiry; and
- (b) a person qualified in law, who must act as the chairperson of the investigating committee.

(7) The investigating committee may, for the purposes of this regulation, appoint a person to assist it in the performance of its functions.

(8) (a) The investigating committee may, subject to section 29 of the Act, for the purposes of a formal inquiry, subpoena any person-

- (i) who may be able to give material information concerning the subject of the formal inquiry; 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 formal inquiry, to appear before the investigating committee at the time and place specified in the subpoena, to be questioned or to produce that 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 person concerned as contemplated in regulation 32D.

(9) The investigating committee may retain a book, document or object produced in terms of subregulation (8) for the duration of the formal inquiry.

(10) The chairperson of the investigating committee may, at the formal inquiry, call upon and administer an oath or take an affirmation from any witness who was subpoenaed in terms of subregulation (8).

(11) (a) The investigating committee may, subject to paragraph (b), permit any information it requires to discharge its duties in terms of this Part, including evidence on mitigating and aggravating circumstances, to be brought to its attention through a process similar to motion proceedings (excluding *ex parte* applications).

(b) The investigating committee may only permit a process similar to motion proceedings -

- (i) if the CIDB and the respondent or his or her representative agree thereto;
- (ii) if there is not a real dispute between the CIDB and the respondent or his or her representative, relating to any material question of fact; and
- (iii) in respect of those relevant facts which is not in real dispute.

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- (c) The decision of the investigating committee to permit a process similar to motion proceedings does not prevent the investigating committee, CIDB or respondent or his or her representative, from permitting, requesting or insisting, as the case may be, that verbal evidence be led on facts pertaining to a dispute between the CIDB and the respondent and his or her representative.
- (d) Despite this subregulation, the investigating committee may only permit alternative dispute resolution proceedings if the principles of natural justice will not be compromised.

(12) At a formal inquiry the respondent -

- (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) may request the assistance of an interpreter;
 - (iv) has the right to be heard;
 - (v) may call witnesses;
 - (vi) may cross-examine any person called as a witness in support of the charge;
 - (vii) may have access to documents produced in evidence;
 - (viii) may call anyone to produce any book, document or object in his or her possession or custody or under his or her control; and
 - (ix) may advance arguments in support of his or her defence;
- (b)
 - (i) may admit at any time before the investigating committee gives its verdict, that he or she is guilty of the charge referred to in subregulation (1)(a)(ii), despite the fact that he or she may have denied responsibility in terms of subregulation (1)(a)(iii); and
 - (ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be found guilty of the charge referred to in subregulation (1)(a)(ii); and
- (c) may, in the event of him or her being found guilty in terms of subregulation (15)(a), present mitigating circumstances to the investigating committee by addressing the investigating committee, calling witnesses or presenting facts to the investigating committee through any process permitted by the investigating committee.

(13)(a) A witness in a formal inquiry 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;

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- (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 in a formal inquiry must –
- (i) remain in attendance until excused by the investigating committee from further attendance;
 - (ii) appear at a later date and time to continue with his or her testimony, as warned by the investigating committee.
- (c) 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 investigating committee by, a witness in the formal inquiry.
- (d) 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 -
- (i) the record is accompanied by a certificate from the chairperson of that commission; and
 - (ii) the certificate certifies that the investigation was lawful, reasonable and procedurally fair.

(14) If the respondent has been found guilty of a criminal offence in a court of law and the conduct with which the respondent is charged with in terms of subregulation (1)(a)(ii) is an element or the subject matter of that criminal offence, a copy of the record of the criminal proceedings, certified in terms of section 235 of the Criminal Procedure Act, 51 of 1977, is sufficient proof of the commission by the respondent of that offence, if it is proven that –

- (a) the respondent is the same person who was convicted of that criminal offence; and
 - (b) no appeal or review proceedings in terms of Chapters 30 and 31 of the Criminal Procedure Act, 1977, are pending against the criminal judgement of the court which convicted the respondent of that criminal offence.
- (15) (a) After the conclusion of the formal inquiry the investigating committee must within 30 days make a finding as to whether the respondent is guilty of the charges brought against him or her in terms of subregulation (1)(a)(ii).
- (b) If the investigating committee finds the respondent guilty in terms of paragraph (a), the investigating committee must -

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- (i) inform the respondent of the finding and clearly state the reasons for the finding;
- (ii) take cognizance of any aggravating or mitigating circumstances; and
- (iii) sanction the respondent as contemplated in subregulation (18).

(16) The investigating committee may postpone the formal inquiry at any time before passing sanction, if it is reasonable and justifiable in the circumstances to do so.

- (17) (a) Where the investigating committee consists of more than three members, and certain members do not agree with the investigating committee's finding, the decision of the majority of the members is the finding of the investigating committee.
- (b) If the investigating committee consists of an even number of members and there is a split decision on any finding, the Chairperson has an additional deciding vote.

(18) The sanctions which the investigating committee may impose include-

- (a) ordering the removal of the name of a contractor from the register in accordance with section 19 of the Act where the charge relates to a transgression of section 18(1) of the Act;
- (b) issuing a warning to the respondent, which warning remains valid for a period not exceeding one year;
- (c) downgrading the respondent's current contractor grading designation in the register by a maximum of two grades, for a period determined by the investigating committee;
- (d) imposing a fine not exceeding R100 000.00 on the respondent;
- (e) restricting or prohibiting the respondent from participating in public sector construction works procurement for a period of time, which period may not exceed 10 years;
- (f) ordering the cancellation of the registration of the respondent and placing a prohibition on the re-application for registration by the respondent as contemplated in subregulation (21);
- (g) making a cost determination that the accused, the CIDB or the party who initiated the investigation, must defray all or part of the costs incurred to conduct the formal inquiry;
- (h) ordering any specific performance relevant to the charges brought against the respondent in terms of subregulation (1)(a)(ii); and
- (i) any combination of the sanctions referred to in paragraphs (a) to (h).

(19) When imposing a fine as contemplated in subregulation (18)(d) the investigating committee may determine the date on which that fine must be paid by the respondent, or the period of repayment and the amount of interim payments permitted.

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(20) Where the respondent on whom the committee has imposed a fine was downgraded as contemplated in subregulation (18)(c) or restricted or prohibited as contemplated in subregulations (18)(e) or (f), the committee may determine that the period of being downgraded or the period of restriction or prohibition be extended if the fine has not been paid on the date determined in terms of subregulation (19), until that fine is paid, but that extension may not exceed the period for which the contractor was downgraded or the period of 10 years as contemplated in subregulation (18)(e).

(21) Any fine imposed by the investigating committee in terms of subregulation (18)(d) must be paid into the bank account of the CIDB.

(22) (a) If the investigating committee imposes a sanction as contemplated in subregulation (18)(f) it must determine the period for which the respondent may not re-apply for registration, which period may not be longer than five years after the date of the imposition of the sanction.

(b) A prohibition of the investigating committee referred to in paragraph (a) includes an application from the respondent under a legal entity different to the one that had been found guilty.

(23) The investigating committee must, within a reasonable period after passing the sanction, notify the respondent -

(a) of his or her right to judicial review of the finding and sanction of the investigating committee in terms of section 6 of the Promotion of Administrative Justice Act, 3 of 2000; and

(b) in terms of Chapter 3 of the Regulations on Fair Administrative Procedures issued in terms of the Promotion of Administrative Justice Act, 2000 –

(i) of his or her right to request reasons for any of the investigating committee's actions in terms of section 5 of the Promotion of Administrative Justice Act, 2000; and

(ii) any other information stipulated in Chapter 3 of the Regulations on Fair Administrative Procedures.

(24) Subject to subregulation (25), any finding or sanction imposed in terms of this regulation comes into effect immediately and the CIDB must, if applicable, within 5 working days after the hearing has been concluded, update the register of contractors to reflect the outcome of the hearing.

(25) If any judicial review is instituted in terms of the Promotion of Administrative Justice Act, 2000,

(a) the respondent must notify the CIDB of that review;

(b) the finding or sanction imposed in terms of this regulation is suspended from the date that the judicial review comes to the notice of the CIDB until that review has been finalized by a court of law; and

(c) if that court sets aside, varies or amends the finding and sanction of the investigating committee, the CIDB must, if applicable, amend the register accordingly within seven working days after notification of the decision of that court.

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(26) The CIDB must publish the details of the finding and sanction of the investigating committee in the *Gazette* and if applicable, update the register of contractors accordingly.

(27) Any contractor whose registration is endorsed as a result of the findings of the investigating committee must in any subsequent application for registration as a contractor disclose such endorsement and any applicant who fails to disclose such endorsement, is guilty of an offence.

(28) A contractor whose registration is downgraded by the investigating committee in terms of subregulation (18)(c) –

- (a) may, after the period of downgrading ordered by the investigating committee, apply for the original grading or another or higher grading; and
- (b) must disclose in the application referred to in paragraph (a) the grade from and to which he or she was downgraded, and any applicant who fails to disclose such downgrading is guilty of an offence.

Regulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Offences

- 30.** (1) Any person or organ of state who-
- (a) supplies the CIDB with false information to mislead the CIDB;
 - (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 CIDB 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 CIDB 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 CIDB 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 CIDB.

(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.

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- As at 14 November 2008-

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 and during a formal inquiry in terms of regulation 29 of these Regulations be admissible as evidence upon the mere production thereof, 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, fax or electronic record from or of which such extract or copy was made.

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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.

Application of Electronic Communications and Transaction Act, 2002

32A. The provisions of sections 15, 18, 22 and 24 of the Electronic Communications Transaction Act, 25 of 2002, apply to the proceedings of the investigating committee, in respect of admissibility, evidential weight and interpretation of data messages.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Criminal proceedings do not bar formal inquiry

32B. The acquittal or the conviction of the respondent by a court of law on a criminal charge does not bar proceedings against him or her under the Regulations, even if the facts would, if proven, constitute the offence he or she has been charged with in the criminal proceedings.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Electronic signature

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32C. (1) If a provision of Part V of the Regulations requires a document to be signed or initialled by or on behalf of a person, it may be effected by use of an electronic signature or an advanced electronic signature as defined in the Electronic Communications and Transactions Act, 25 of 2002.

(2) An unaltered electronically or mechanically generated reproduction of any document may be substituted for the original for any purpose for which the original could be used in terms of the Act.

- (3) If a form or document is prescribed by or in terms of the Act, for any purpose –
- (a) it is sufficient if the person required to prepare or complete such a document does so in a form that satisfies all of the substantive requirements of the prescribed form; and
 - (b) any deviation from the design or content of the prescribed form does not invalidate the action taken by the person preparing or completing that document, unless the deviation –
 - (i) negatively affects the substance of the document; or
 - (ii) is calculated to mislead.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Serving of notice or subpoena

- 32D.** (1) Any notice or subpoena issued in terms of Part V of the Regulations may be served:
- (a) personally;
 - (b) by leaving a copy of the notice or subpoena at the intended recipient's place of residence with a person apparently in charge of the premises at the time of delivery and who is apparently not less than 16 years of age;
 - (c) by affixing a copy of the notice or subpoena to the door of the intended recipient's last-known place of residence;
 - (d) by sending a copy of the notice or subpoena by registered post to the intended recipient's postal address indicated on the CIDB's website or last known postal address;
 - (e) by transmitting a copy of the notice or subpoena by telefax or through other electronic communications means to the domain indicated on the CIDB's website, or last known domain; or
 - (f) by following any of the above means in serving the notice to a person reasonably believed to appear on behalf of the intended recipient with regard to the subject matter of the notice or subpoena.

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(2) The service of any notice or subpoena required to be served in terms of the Regulations must be effected between 06h00 and 20h00 on any day.

(3) Where the service of a notice or subpoena is effected by hand, an additional copy of the notice or subpoena must be prepared and the person receiving the notice must be requested to sign and date the copy and return it to the person serving the notice.

(4) Despite the provisions of subregulation (1) -

(a) it is sufficient if the person required to deliver a notice or subpoena does so in a manner that satisfies all of the substantive requirements of this regulation; and

(b) any deviation from the provisions of subregulation (1) does not invalidate the action taken by the person delivering that notice or subpoena, unless the deviation -

(i) reduces the probability that the intended recipient will receive the notice or subpoena; or

(ii) is calculated to mislead.

(5) If the investigating committee referred to in regulation 29 is not satisfied that the service was effected in accordance with these Regulations or if the court is not satisfied that a copy of the notice or subpoena was in fact received by the intended recipient, it may make any order that is reasonable in the circumstances.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

Employer or principal liable

32E. If in any investigation or prosecution in terms of the Act, these Regulations or the code of conduct, it is proven that-

(a) an employee/employer and/or agent/principal relationship existed (depending on the circumstances) at the time of an action; and

(b) the said action by the employee or agent is found by the investigating committee contemplated in regulation 29 or a court not to comply with the Code of Conduct, or to be a transgression of the Act or these Regulations,

that employer or principal is liable for the said action of his or her employee or agent, unless it is proven by the employer or principal on a balance of probabilities that the employer or principal, as the case may be, had no reason to believe that his or her employee or agent had in any way failed to discharge their duties, providing that such absence of belief must be reasonable in the circumstances.

Regulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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Cognisance may be taken of information contained in register or record

33. The Minister, the CIDB 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 CIDB.

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.
- (c) subject to the prior consent of the Minister, to a competent authority of another country.

Paragraph inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(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.

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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 in contractor grading designations 2 to 9 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.

Subregulation (2) was substituted by Government Notice No.1121 of 23 November 2007, published in Government Gazette No. 30510 of 23 November 2007

(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 CIDB 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 regarded to be a receipt in terms of this subregulation..

Subregulation substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 January 2008.

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 CIDB accordingly.

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

(3) Despite subregulation (2), a contractor must within three months after the expiry date of his or her tax clearance certificate, submit a current tax clearance certificate to the CIDB.

Subregulation inserted by Government Notice No 8986 of 14 November 2008, published in

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Government Gazette No 31603 of 14 November 2008.

Approved forms

37. Approved forms in relation to these Regulations may be obtained from the CIDB and submitted to the CIDB 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 CIDB 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.

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(4) For the purpose of the fair and equitable implementation of these Regulations, the CIDB may until 15 November 2008, notwithstanding anything to the contrary contained in these Regulations, relax any requirement in relation to the category of registration contemplated in Part II of the Regulations.

Subregulation (4) was inserted by Government Notice No. R.1333 of 12 November 2004, published in Government Gazette No. 26991 of 12 November 2004

The date in subregulation (4) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007

(4A) For the purpose of the fair and equitable implementation of these Regulations, the CIDB may until 15 November 2008, notwithstanding anything to the contrary contained in these Regulations, relax any requirement in relation to -

- (a) the registration of projects contemplated in Part III of these Regulations;
- (b) the invitation, award and management of construction works contracts contemplated in Part IV of these Regulations,

concerning construction works projects and contracts which solely relate to installation, repair, maintenance or alteration in consultation with the industry concerned.

Subregulation (4A) was inserted by Government Notice 842 of 29138, published in Government Gazette No. 29138 of 18 August 2006.

The date in subregulation (4A) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

(5) Until otherwise determined by the CIDB by notice in the Gazette, a private sector client or employer must report the award of a construction works contract on the CIDB's website.

The date in subregulation (5) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

Subregulation (5) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(6) Until otherwise determined by the CIDB by notice in the Gazette and notwithstanding Part III of these Regulations, -

- (a) in relation to a public sector client or employer,
 - (i) the advertisement of a tender invitation in terms of a competitive process and the report of the award of a contract following that advertisement; and
 - (ii) the report of the award of a contract in terms of a non-competitive tender,
 - (iii) the report of a cancellation of contract, where applicable or
- (b) in relation to a client or employer for the private sector the report of the award of a contract and, where applicable, the cancellation of a contract,

on the approved form on the CIDB's website, is deemed to be registration of that project in terms of Part 111 of these Regulations.

The date in subregulation (6) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

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Subregulation (6) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(7) A client or employer is until otherwise determined by the CIDB by notice in the Gazette, exempt from paying the fee referred to in regulation 18(4).

The date in subregulation (7) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

Subregulation (7) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(8) Until otherwise determined by the CIDB by notice in the Gazette, the invitation of a tender offer, report of the award of a contract or the cancellation thereof as contemplated in subregulation (6) on the CIDB's website, at least monthly in relation to the public sector and quarterly in relation to the private sector is deemed to be a report in terms of regulation 21.

The date in subregulation (8) was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

Subregulation (8) substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(9) If a contractor who was registered in terms of these Regulations, as a result of the relaxation of any requirement in terms of subregulation (4), qualifies to be registered in a contractor grading designation higher than the grade in which he or she was registered, that contractor may on the date of payment of his or her annual fee referred to in regulation 35(2) and notwithstanding regulation 8, be so upgraded.

(10) If a contractor who qualifies as contemplated in subregulation (8), wishes to be registered in the higher contractor grading designation before the date of payment of his or her annual fee, that contractor may apply for that amendment of category status in terms of regulation 8 and the contractor is liable to pay the fee referred to in that regulation.

Subregulations (5) to (10) were inserted by Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005

(11) Any CIDB notice issued under subregulations (4) to (8) by the CIDB before the commencement of this subregulation remains valid until 15 November 2008, unless that notice is repealed by the CIDB.

(12) The CIDB may, with the consent of the Minister, by notice in the Gazette, relax any requirement of these Regulations that is reasonably necessary for the exercise of its powers in terms of these Regulations.

Subregulations (11) and (12) were inserted by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

(13) Despite subregulation (11), any contractor who was registered on 1 January 2009, and who at application for that registration, in terms of relaxation 1 published by CIDB Notice 66 of 2005, submitted proof of application for professional registration as contemplated in regulation 12(8), but not proof of such registration, must submit that proof on the date on which he or she applies in terms of

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regulation 8 to amend his or her category status, the date of renewal of his or her registration as referred to in regulation 9 or the date on which he or she must confirm his or her particulars in terms of regulation 36(2).

Subregulation inserted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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.

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*Schedule 1 deleted by Government Notice No 8986 of 14 November 2008, published
in Government Gazette No 31603 of 14 November 2008.*

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**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;	450.00	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	450.00	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 1 was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007.

Table 1 substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette of 14 November 2008.

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)	0.00	Section 16(8)
2(class of construction works)	250.00	Section 16(8)
3(class of construction works)	350.00	Section 16(8)
4(class of construction works)	900.00	Section 16(8)
5(class of construction works)	1750.00	Section 16(8)
6(class of construction works)	3500.00	Section 16(8)
7(class of construction works)	9000.00	Section 16(8)
8(Class of construction works)	29000.00	Section 16(8)
9(class of construction works)	55000.00	Section 16(8)

Table 2 was amended by Government Notice No.1121 of 23 November 2007, published in Government Gazette No.30510 of 23 November 2007

Table 2 substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette of 14 November 2008.

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**SCHEDULE 3
CLASSES OF CONSTRUCTION WORKS**

Description	Designation	Definition	Basic works types	Examples
Civil engineering works	CE	Construction works that are primarily concerned with materials such as steel, concrete, earth and rock and their application in the development, extension, installation, maintenance, removal, renovation, alteration, or dismantling of building and engineering infrastructure	Water, sewerage, roads, railways, harbours and transport, urban development and municipal services	Structures such as a cooling tower, bridge, culvert, dam, grand stand, road, railway, reservoir, runway, swimming pool, silo or tunnel The results of operations such as dredging, earthworks and geotechnical processes. Township services, water treatment and supply, sewerage works, sanitation, soil conservation works, irrigation works, storm-water and drainage works, coastal works, ports, harbours, airports and pipelines.
Electrical engineering works (Infrastructure)	EP	Construction works that are primarily concerned with development, extension, installation, removal, renovation, alteration or dismantling of engineering infrastructure: a) relating to the generation, transmission and distribution of electricity; or b) which cannot be classified as EB.	Electrical power generation, transmission, control and distribution equipment and systems.	Power generation Street and area lighting Substations and protection systems Township reticulations Transmission Lines Supervisory control and data acquisition systems
Electrical engineering works (buildings)	EB	Construction works that are primarily concerned with the installation, extension, modification or repair of electrical installations in or on any premises used for the	All electrical equipment forming an integral and permanent part of buildings and/or structures, including any wiring, cable jointing and laying and	Electrical installations in buildings Electrical reticulations within a plot of land (erf) or building site Standby plant and uninterrupted power supply Verification and certification of electrical installations on premises

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Description	Designation	Definition	Basic works types	Examples
		transmission of electricity from a point of control to a point of consumption, including any article forming part of such an installation	electrical overhead line construction	
General building works	GB	Construction works that: a) are primarily concerned with the development, extension, installation, renewal, renovation, alteration, or dismantling of a 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.	Buildings and ancillary works other than those categorised as being: c) civil engineering works; d) electrical engineering works; e) mechanical engineering works; or f) specialist works.	Buildings for domestic, industrial, institutional or commercial occupancies Car ports Fences other than classified as SS Stores Walls

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Description	Designation	Definition	Basic works types	Examples
Mechanical engineering works	ME	Construction works that are primarily concerned with the development, extension, installation, removal, alteration, renewal of engineering infrastructure for gas transmission and distribution, solid waste disposal, heating, ventilation and cooling, chemical works, metallurgical works, manufacturing, food processing and, materials handling	Machine systems including those relating to the environment of building interiors: a) gas transmission and distribution systems b) pipelines c) solid waste disposal d) materials handling, lifting machinery, heating, ventilation and cooling, pumps, e) continuous process systems f) chemical works, metallurgical works, manufacturing, food processing such as that in concentrator machinery and apparatus, oil and gas wells, smelters, cyanide plants, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances or other chemical processes.	Air-conditioning and mechanical ventilation Boiler installations and steam distribution Central heating Centralised hot water generation Cranes and hoists Dust and sawdust extraction Compressed air, gas and vacuum installations Conveyor and materials handling installations Continuous process systems involving chemical works, metallurgical works, oil and gas wells, acid plants, metallurgical machinery, equipment and apparatus, and works necessary for the beneficiation of metals, minerals, rocks, petroleum and organic substances and other chemical processes Kitchen equipment Laundry equipment Lift installations and escalators Refrigeration and cold rooms Waste handling systems (including compactors)
Specialist	SB	A subset of construction	The extension, installation, repair, maintenance or renewal, or removal, of asphalt	

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Description	Designation	Definition	Basic works types	Examples
works	SC	works identified and defined by the CIDB that involves specialist capabilities for its execution		The development, extension, installation, removal, and dismantling, as relevant, associated with building excavations, shaft sinking and lateral earth support
	SD		The development, extension, installation, repair, renewal, removal, or alteration of corrosion protection systems (cathodic, anodic and electrolytic)	
	SE		Demolition of buildings and engineering infrastructure and blasting	
	SF		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of fire prevention and protection infrastructure (drencher and sprinkler systems and fire installation)	
	SG		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of glazing, curtain walls and shop fronts	
	SH		The development, extension, installation, maintenance, renewal, removal, alteration or dismantling, as relevant, of landscaping, irrigation and horticultural works	
	SI		The development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration or dismantling of lifts, escalators, travellers and hoisting machinery	
	SJ		The development, installation, removal, or dismantling, as relevant, of piles and other specialized foundations for buildings and structures	
	SK		The installation, renewal, removal, alteration or dismantling, as relevant, road markings and signage	
	SL		The development, extension, installation, renewal, removal, renovation, alteration or dismantling of structural steelwork and scaffolding	
	SM		Timber buildings and structures	
	SN		The extension, installation, repair, maintenance, renewal, removal, renovation or alteration, as relevant, of the waterproofing of basements, roofs and walls using specialist systems.	
	SO		The development, extension, installation, renewal, removal, alteration or dismantling or demolition of water installations and soil and waste water drainage associated with buildings (wet services, plumbing)	
	SQ		The development, extension, installation, repair, removal, alteration, dismantling or demolition of precast concrete or steel fencing	

Schedule 3 substituted by Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

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SCHEDULE 4

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*

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ANNEXURE

Transitional measures listed in Government Notice No 8986 of 14 November 2008, published in Government Gazette No 31603 of 14 November 2008.

(1) An application for registration as a contractor that was made before the commencement of these Construction Industry Development Amendment Regulations, 2008, may until 31 March 2009 be assessed in accordance with the requirements for registration as a contractor contained in the Regulations before the commencement of these Regulations, but any new application that is made after the commencement of these Regulations, must be made and evaluated in accordance with the Regulations as amended.

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

(3) Any investigation or prosecution initiated before the commencement of these Construction Industry Development Amendment Regulations, 2008, must be finalised in accordance with the Regulations before these Regulations commenced.

(4) A tender invitation that was published before the commencement of these Construction Industry Development Amendment Regulations, 2008, must be evaluated in accordance with the Regulations that were applicable at the time of invitation and in accordance with the conditions of tender specified in the tender data, but in the case of the classes of works SA (Alarms, security and access control systems), a contractor who submits a tender offer that relates to those classes of works, may not be penalised for not being registered in terms of these Regulations.

(5) A contractor that was registered in the specialist classes of works SA (Alarms, security and access control systems) and SP [Building of Homes as contemplated in the Housing Consumer Protection Measures Act (Act No 95 of 1998)] is entitled to a pro rata refund of the annual fees paid by him or her in terms of section 16(2) of the Act, calculated from the date of commencement of these Regulations to the date on which the next annual fee for the contractor concerned is payable.

The CIDB may in accordance with the information available in the register of contractors, amend the class of works reflected in the category of registration of a contractor if that category of registration reflects the electrical engineering (EE) class of works.