


CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000: FOR PUBLIC COMMENT – Gazette No. 35727 Notice No. 794

Draft amendments to the Construction Industry Development Regulations, published under GN 692 in GG 26427 of 9 June 2004, as amended.

Closing date for comments: 5 December 2012

1.	<p>Definitions In these Regulations, unless the context otherwise indicates, every word takes the meaning as defined in the Act, and -</p>	<p>Construction industry Development Regulations, 2004 (as amended) – As at 14 November 2008- http://www.cidb.org.za/default.aspx [cidb Regulations ]</p>
	<p>"the Regulations" means the Construction Industry Development Regulations, published under Government Notice Numbers: No. R. 692 Government Gazette No. 26427 of 9 June 2004 in, as amended by No. R. 1333 published in Government Gazette No. 26991 of 12 November 2004, No. R. 751 published in Government Gazette No. 27831 of 22 July 2005, No. R. 842 published in Government Gazette No. 29138 of 18 August 2006, No. R. 1121 published in Government Gazette No. 30510 of 23 November 2007, and No. R.1224 published in Government Gazette No. 31603 of 14 November 2008.</p>	
2.	<p>Amendment of Regulation 1 Regulation 1 is amended by deleting the definition of "qualified person".</p>	<p>“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);</p>
3.	<p>Insertion of Regulation 3(1) in Regulations The following sub-regulation is inserted after sub-regulation 3(k): "(l) the broad-based black economic empowerment recognition level of a contractor prescribed in terms of the Codes of Good Practice issued under the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003) from time to time."</p>	
4.	<p>Deletion of Regulation 7(4)(h) Regulation 7(4)(h) is deleted.</p>	<p>(h) if qualified persons employed by the contractor are required to be registered in terms of any legislation, proof of that registration;</p>
5.	<p>Substitution of Regulations 11(2) and 11(2A) Regulations 11(2) and 11(2A) are substituted for the following Regulation: "(2) The financial capacity of a contractor is determined by establishing whether: (a) the contractor's best annual turnover over the two financial years immediately preceding the application equals or exceeds the minimum annual turnover in the third column of Table 1 determined in relation to the financial capability designation contemplated in regulation 12(1); (b) the contractor during the five years immediately preceding the application has completed at least one construction works contract of which the total contract value equals or exceeds the amount in the fourth column of Table 1 of the financial capability referred to in regulation 12(1); and (c) the contractor has available capital calculated in accordance with subregulation (3), equal to or exceeding a value determined in relation to the financial capability designation as contemplated in regulation 12(1)"</p>	<p>11. (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. (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</p>

		capability designation as contemplated in regulation 12(1).
6.	Deletion of Regulation 11(2B) Regulation 11(2B) is deleted.	11. (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).
7.	Insertion of Regulation 11 (4A) and 11(4B) in Regulations The following sub-regulations are inserted after sub-regulation 11(4)(g): "(4A) A contractor seeking the transfer of records referred to in subregulation (4), must apply to the Board in writing for its approval of such transfer and must furnish such particulars as the Board may require. (4B) The Board must, within 30 working days from receipt of a duly completed application referred to in subregulation (4A), notify the contractor of its decision."	
8.	Substitution of Regulation 11(5) Sub-regulation 11(5) is substituted for the following sub-regulation: "(5) The works capability of a contractor must be determined by establishing whether- (a) the contractor has satisfied the requirements contemplated in regulation 12(5) in relation to any specific class of construction works; and (b) the contractor has during the five years immediately preceding the application completed at least one construction works contract in the category of construction works for which the contractor wishes to register, of which the value equals or exceeds the amount of that works capability designation as contemplated in regulation 12(7)"	11. (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)- (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..

9.	<p>Amendment of Regulation 12(1) Regulation 12(1) is amended by the substitution in sub-regulation (1) thereof for Table 1 of the following Table:</p>	<p>12. (1) The values required to determine the financial capability of a contractor are as indicated in table 1 below: TABLE 1</p>																																																		
<p>“TABLE 1</p> <table border="1" data-bbox="241 359 1198 798"> <thead> <tr> <th><i>Designation</i></th> <th><i>Upper limit, (R) of tender value range</i></th> <th><i>Best Annual Turnover (50% of Upper Limit of tender value range)</i></th> <th><i>Largest Contract (22.5% of Upper Limit of tender value range. 20 % for Grade 2)</i></th> <th><i>Available capital (R)(10% of Upper Limit of tender value range, 5% for Grade 3 & 4)</i></th> </tr> </thead> <tbody> <tr> <td><i>1</i></td> <td><i>200 000</i></td> <td><i>-</i></td> <td><i>-</i></td> <td><i>-</i></td> </tr> <tr> <td><i>2</i></td> <td><i>650 000</i></td> <td><i>-</i></td> <td><i>R 130,000</i></td> <td><i>-</i></td> </tr> <tr> <td><i>3</i></td> <td><i>2 000 000</i></td> <td><i>1,000,000</i></td> <td><i>R 450,000</i></td> <td><i>100,000</i></td> </tr> <tr> <td><i>4</i></td> <td><i>4 000 000</i></td> <td><i>2,000,000</i></td> <td><i>R 900,000</i></td> <td><i>200, 000</i></td> </tr> <tr> <td><i>5</i></td> <td><i>6 500 000</i></td> <td><i>3,250,000</i></td> <td><i>R 1,500,000</i></td> <td><i>650, 000</i></td> </tr> <tr> <td><i>6</i></td> <td><i>13 000 000</i></td> <td><i>6,500,000</i></td> <td><i>R 3,000,000</i></td> <td><i>1,300 000</i></td> </tr> <tr> <td><i>7</i></td> <td><i>40 000 000</i></td> <td><i>20,000,000</i></td> <td><i>R 9,000,000</i></td> <td><i>4,000.000</i></td> </tr> <tr> <td><i>8</i></td> <td><i>130 000 000</i></td> <td><i>65,000,000</i></td> <td><i>R 30,000,000</i></td> <td><i>13,000.000</i></td> </tr> <tr> <td><i>9</i></td> <td><i>No Limit</i></td> <td><i>200,000,000</i></td> <td><i>R 90,000,000</i></td> <td><i>40,000.000</i></td> </tr> </tbody> </table>		<i>Designation</i>	<i>Upper limit, (R) of tender value range</i>	<i>Best Annual Turnover (50% of Upper Limit of tender value range)</i>	<i>Largest Contract (22.5% of Upper Limit of tender value range. 20 % for Grade 2)</i>	<i>Available capital (R)(10% of Upper Limit of tender value range, 5% for Grade 3 & 4)</i>	<i>1</i>	<i>200 000</i>	<i>-</i>	<i>-</i>	<i>-</i>	<i>2</i>	<i>650 000</i>	<i>-</i>	<i>R 130,000</i>	<i>-</i>	<i>3</i>	<i>2 000 000</i>	<i>1,000,000</i>	<i>R 450,000</i>	<i>100,000</i>	<i>4</i>	<i>4 000 000</i>	<i>2,000,000</i>	<i>R 900,000</i>	<i>200, 000</i>	<i>5</i>	<i>6 500 000</i>	<i>3,250,000</i>	<i>R 1,500,000</i>	<i>650, 000</i>	<i>6</i>	<i>13 000 000</i>	<i>6,500,000</i>	<i>R 3,000,000</i>	<i>1,300 000</i>	<i>7</i>	<i>40 000 000</i>	<i>20,000,000</i>	<i>R 9,000,000</i>	<i>4,000.000</i>	<i>8</i>	<i>130 000 000</i>	<i>65,000,000</i>	<i>R 30,000,000</i>	<i>13,000.000</i>	<i>9</i>	<i>No Limit</i>	<i>200,000,000</i>	<i>R 90,000,000</i>	<i>40,000.000</i>	
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10.	<p>Deletion of Regulation 12(4) Regulation 12(4), together with Table 4A and Table 4B referred to therein, is deleted.</p>	<p>12. (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:</p>																																																		
11.	<p>Amendment of Regulation 12(7) Regulation 12(7) is amended by substituting in sub-regulation (7) thereof for Table 5 of the following Table: "TABLE 5</p>	<p>12. (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</p>																																																		

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

12.	<p>"Deletion of Regulation 12(8) Regulation 12(8) is deleted.</p>	<p>12. (8) A person is considered to be a qualified person for the purpose of regulation 7(4) if that person(a) for the classes of construction works “Civil Engineering”, “Electrical Engineering” and Mechanical Engineering” is registered 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.</p>
13.	<p>Amendment of Regulation 17 Regulation 17 is substituted for the following regulation: "17. A contractor registered in a contractor grading designation indicated in column 1 of the Table 8 below, is considered to be capable of undertaking a contract in the range of tender values indicated in column 2 of that table in the class of the construction works to which the category of registration of that contractor relates. TABLE 8</p>	<p>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.</p>

TABLE 8

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

14. **Insertion of Regulation 17A in Regulations**
 The following subregulation is inserted after regulation 17:
 "Tender value range adjustments
 17A. (1) The Minister must, at least once every three years, after consultation with the Board, determine-
- (a) the range of tender values for purposes of determining the values of contracts that contractors are considered capable of undertaking; and
 - (b) a method for the calculation of the range of tender values contemplated in subregulation (1)(a).
- (2) Before making a determination contemplated in this subregulation, the Minister must publish in the Gazette a notice-
- (a) setting out the proposed range of tender values and method of calculation for purposes of this subregulation; and
 - (b) inviting written submissions on that proposal, within the period stated in the notice, of not less than thirty days from the date of publication of the notice.
- (3) If the Minister alters the proposed range of tender values and method of calculation contemplated in subregulation 2(a), as a result of a comment, he or she need not publish those alterations before making the determination.
- (4) Within six months after publishing a notice in terms of subregulation (2), the Minister must publish in the Gazette a notice-
- (a) setting out the new range of tender values and method of calculation for purposes of this subregulation; and
 - (b) the effective date of the range of tender values.
- (5) In the event that a subsequent range of tender values referred to in subregulation

	<p>17A. (1) is not timeously published by the Minister, the last published range of tender values shall, notwithstanding the provisions of subregulation 17A.(1), remain in force and effect until the publication of the next range of tender values.</p> <p>(6) Notwithstanding a determination made by the Minister in terms of subregulation (1), a contractor's grading designation will remain unchanged for the duration of the contractor's registration existing at the time of the determination."</p>	
15.	<p>Amendment of Regulation 25(5) (a) Subregulation 25(5)(a) is substituted for the following subregulation: "(a) every member of the joint venture is a registered contractor in terms of these Regulations and the lead partner has a contractor grading designation of not more than one level below the required grading designation in the class of construction works under consideration and possesses the required recognition status; and"</p>	<p>25. (5) Subject to subregulation (1), joint ventures are eligible to submit tender offers or expressions of interest if-</p> <p>(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;</p>
16.	<p>Substitution of Regulation 25(6) Sub-regulation 25(6) is substituted for the following sub-regulation: "(6) The contractor grading designation for a joint venture is determined either in accordance with table 9 or in accordance with regulation 11 but is calculated based on -</p> <p>(a) the sum of the annual turnover of all members to the joint venture; and</p> <p>(b) the sum of the available capital of all the members to the joint venture;</p> <p>but where -</p> <p>(i) a contractor is graded solely on the basis of the available capital, that contractor is deemed to have an annual average turnover equal to the values set out in columns 3 and 4 of Table 1 in regulation 12(1) in relation to his or her contractor grading designation; and</p> <p>(ii) a contractor is registered in grading designation of 3 or 4, the actual values that were used for the parameters that were assessed and notional values must be assigned to the parameters referred to in paragraphs (a) and (b) that the contractor was not assessed on, in accordance with the following formula:</p> $\text{Notional value for parameter not assessed} = \frac{(A - B) \times (E - D) + D}{(C - B)}$ <p>where:</p> <p>A = value accepted by the Board for available capital / annual average turnover / contract value to determine the capability of a contractor;</p> <p>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)];</p> <p>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</p>	<p>25. (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-</p> <p>(a) the sum of the annual turnover of all the members to the joint venture;</p> <p>(b) the sum of the available capital of all the members to the joint venture; and</p> <p>(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-</p> <p>(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</p> <p>(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:</p> $\text{Notional value for parameter not assessed} = \frac{(A - B) \times (E - D) + D}{(C - B)}$ <p>where:</p> <p>A = value accepted by the CIDB for available capital / annual average turnover / contract value to determine the capability of a contractor;</p> <p>B = minimum value of average annual available capital / average turnover, corresponding to A, required to determine the capability of a contractor in the contractor</p>

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)]

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

TABLE 9

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

17.	<p>Amendment of Schedule 3: Classes of construction works</p> <p>(1) General building works under Schedule 3 is amended by deleting the words "fences other than classified as SO" in the fifth column.</p> <p>(2) SQ Specialist works under Schedule 3 is amended by substituting the definition for the following: "The development, extension, installation, repairs, dismantling of precast walls, installation of wire perimeter fencing, diamond perimeter fencing, palisade steel fencing with posts and stay at intervals"</p>	SQ: The development, extension, installation, repair, removal, alteration, dismantling or demolition of precast concrete or steel fencing
18.	<p>Transitional measures</p> <p>(1) An application for registration as a contractor that was received before the commencement of these Construction Industry Development Amendment Regulations, 2012, may be assessed and evaluated in accordance with the requirements for registration as a contractor contained in the Regulations before the commencement of these Regulations but any new application that is received after the commencement of these Regulations must be assessed and evaluated in accordance with the Regulations as amended.</p> <p>(2) Any renewal process or update of particulars that has been initiated by the Board may be finalised in terms of the Regulations before the commencement of these Regulations.</p> <p>(3) A contractor who is registered before publication in the Gazette of the tender value range adjustments, the tender value range applicable at the time of registration will remain valid and the three year registration period will remain valid</p> <p>(4) Any investigation or prosecution initiated before the commencement of these Regulations must be finalised in accordance with the Regulations that were applicable before these Regulations commenced.</p> <p>(5) A tender invitation that was published before the commencement of these Regulations must be evaluated in accordance with the Regulations that were applicable at the time of invitation and in accordance with the conditions of tender specified in the tender data.</p>	
19.	<p>Short title and commencement</p> <p>These regulations are called the Construction Industry Development Amendment Regulations, 2012, and come into effect on the date of publication thereof in the Gazette.</p>	