



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 460

Pretoria, 31

October  
Oktober 2003

No. 25656



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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## BOARD NOTICES

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### BOARD NOTICE 126 OF 2003

## **CONSTRUCTION INDUSTRY DEVELOPMENT BOARD**

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### **THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000 (ACT NO.38 OF 2000)**

### **DRAFT CONSTRUCTION PROCUREMENT BEST PRACTICE**

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

***The Act tasks the CIDB to:***

- ***Determine and establish best practice (desirable and appropriate standards, processes, procedures, methods or systems) that promote:***
  - *improved industry stability;*
  - *improved industry performance, efficiency and effectiveness;*
  - *procurement and delivery management reform;*
  - *improved public sector delivery management;*
  - *national social and economic objectives; and*
  - *human resource development in the construction industry*
- ***Provide information to stakeholders on best practice [Section 4(d)]***

The CIDB identified a number of draft procurement practices for peer review by a focus group of specialists, practitioners and stakeholders.

The CIDB convened a focus group comprising some fifty knowledgeable practitioners, representing a broad spectrum of stakeholders including public and private sector clients, investors, voluntary associations of established and emerging business, contractors, the consulting professions, subcontractors, materials suppliers, and others, to consider what constitutes desirable and appropriate standards, processes, procedures, methods or systems in the field of construction procurement.

**The process has resulted in:**

- the documenting of a number of desirable and appropriate construction procurement practices;
- the identification of a number of industry standards which in themselves contribute to the development of procurement best practice; and
- the development of best practice to address identified gaps.

The outcome is a library of Construction Procurement Best Practice that the CIDB intends to declare as such, following receipt and analysis of public comment.

Recognising the evolving nature of best practice the CIDB will ensure that current best practice, and the library as a whole, will be updated to take account of new developments and gaps.

The adoption of best practices will promote aspects of construction industry development as provided for in the Act. The identified best practices will form the basis for:

- the promotion of uniform application of policy with regard to the construction industry throughout all spheres of Government;
- the overhaul and rationalisation of procurement documents;
- the stimulation of reform and improved procurement practices within the construction sector as a whole; and
- the promotion of uniform and ethical standards;
- value-based procurement improvement.

The CIDB intends finalizing and declaring Construction Procurement Best Practice in terms of section 4(c) and 5(2)(b) of the Act following the receipt of public comment. Comments are invited and should be addressed to:

The Manager: Procurement  
Construction Industry Development Board  
Attention: Mr Malcolm Pautz  
E-mail : malcolmp@cidb.org.za  
Fax : 012 481 9087  
Postal : PO Box 2107 • Brooklyn Square • 0075

All CIDB documents are available in electronic form from the CIDB website ([www.cidb.org.za](http://www.cidb.org.za)) or in hard copy form from the CIDB (Tel 012 343 7136 or 012 481 9030).

A synopsis of the content of each document and a topical index to procurement which allows the sections of documents to be viewed on line is available on the aforementioned website. CDs containing electronic versions of these documents and the topical index are also available from the CIDB.

**Comments must reach the CIDB not later than 30<sup>th</sup> January 2004**



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



## **DRAFT CONSTRUCTION PROCUREMENT BEST PRACTICE**

### **1 PREAMBLE**

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

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

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

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

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

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

South Africa's public procurement system is in the process of being overhauled, modernised and transformed. It is moving away from the rigid, prescriptive and

centralised system that was established in the 1960s whereby tender boards assumed responsibility for procurement to a more flexible, performance-based and decentralized system. The public sector has in recent years also explored new ways of delivering construction works, including design and build and public private partnerships.

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

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

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

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

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

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

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

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

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

- Practice Guide A1, *The procurement cycle*, establishes desirable and appropriate procurement processes and procedures.
- The CIDB Standard Rules for Public Procurement and Practice Guide A2, *Applying the CIDB rules in public procurement*, establishes a desirable and appropriate standard for the conducting of commonly encountered construction procurement processes and procedures, particularly in respect of the public sector.

- Practice Guide A3, *Evaluating tender offers submitted in accordance with the CIDB Standard Conditions of Tender*, provides desirable and appropriate standards for the evaluation of tender offers.
- Practice Guide A4, *Evaluating Quality in Tender Submissions*, establishes desirable and appropriate procedures for the evaluation of quality in all forms of construction procurement.
- Practice Guide A5, *Procedures for Debarring of Contractors in Procurement*, establishes a desirable and appropriate process for accounting officers and authorities in the public sector to discipline contractors who engage in corrupt and fraudulent practices.
- Practice Guide A6, *Procurement in Public Private Partnerships*, establishes desirable and appropriate procedures for the appointment of transaction advisors and contractors in public private partnerships.
- Practice Guide B1, *Formulating and Implementing Preferential Procurement Policies*, provides desirable and appropriate procedures to enable the legislative requirements to be satisfied in construction procurement.
- Practice Guide B2, *Methods and procedures for implementing Preferential Procurement Policies*, establishes desirable and appropriate procedures and methods for implementing preferential procurement policies.
- The CIDB Specification for HIV/AIDS awareness provides desirable and appropriate procedures for the reduction of the transmission of the HIV virus between and among construction workers and the local community.

### **3 UNIFORMITY AND EFFICACY OF PROCUREMENT DOCUMENTATION**

Procurement documents comprise those documents required to:

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

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

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

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

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

The second stage in any such initiative is to develop a common format for the compilation of procurement documents and to establish generic conditions of tender that establishes a tenderer's obligations in submitting a tender and the employer's

undertakings in soliciting and evaluating tender offers. Similarly, standard conditions for the calling for expressions of interest are also desirable.

- Practice Guide C1, *Preparing procurement documents*, establishes a standard structure for the procurement documents and identifies desirable and appropriate forms of contract and component documents.
- Practice Guide C2, *Choosing an appropriate Form of Contract for Engineering and Construction Works Contracts*, establishes desirable and appropriate methods for selecting an appropriate form of contract for a project or for use within an organization.
- The CIDB Standard Conditions of Tender contains desirable and appropriate procedures for the soliciting, submitting and evaluating a tender offer.
- The CIDB Standard Conditions for the Calling for Expressions of Interest contains desirable and appropriate procedures for the preparing and submitting an expression of interest and for the calling for and evaluating such expressions.

#### **4 CONTRACTING STRATEGIES**

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

- Practice Guide A7, *Managing Construction Procurement Risks*, establishes desirable and appropriate risk management practices.

#### **5 DISPUTE RESOLUTION**

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

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

##### **Adjudication**

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

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



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

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

## 6 SUBCONTRACTING ARRANGEMENTS

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

- Practice Guide D1, *Subcontracting Arrangements*, describes desirable and appropriate subcontracting practices. It also identifies standard industry forms of subcontract which are framed around fair conditions of subcontract.

## 7 JOINT VENTURE ARRANGEMENTS

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

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

## **Draft Construction Procurement Best Practice Library**

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

<b>Title</b>	<b>Synopsis</b>
<b>Theme: Uniformity and efficacy in procurement methods, procedures and processes</b>	
<b>CIDB Standard Rules for Public Procurement</b>	These standard rules for procurement provide a comprehensive framework within which procurements can be undertaken in a fair, equitable, transparent, competitive and transparent manner. The rules address the conduct of the parties, the preparation for procurements, solicitation of tender offers, advertisements, tender process requirements and procedures as well as procurements involving disposals. They are designed to ensure equal treatment of tenderers and to provide predictability in the procurement practices of institutions.
<b>Practice Guide A1: The Procurement Cycle</b>	This practice guide identifies six principal procurement activities that apply to all procurements irrespective of their categorization as supplies, services and engineering and construction works. It also identifies the generic steps (sub-activities) associated with such activities and the logical points in the process where controls should be introduced. The actions associated with these activities and sub-activities are documented as well as the inputs and outputs to each of the actions in a logical framework. The practice guide also presents the recommended approach to performing the various activities and sub-activities.
<b>Practice Guide A2: Applying the CIDB Standard Rules for Public Procurement</b>	This practice guide provides guidelines on the appropriate selection and use of the procurement procedures provided for in the CIDB Standard Rules for Public Procurement. The principal activities and related steps associated with procurements are presented. Guidance is also provided as to how institutions may incorporate the steps in their internal control procedures.
<b>Practice Guide A3: Evaluating tender offers submitted in accordance with the CIDB Standard Conditions of Tender</b>	This practice guide provides guidance on the evaluation of tenders in accordance with the provisions of the CIDB Standard Conditions of Tender in respect of the seven steps identified in Practice Guide A1 associated with this activity. It also contains proforma forms to evaluate tender offers and an example of a tender evaluation report.
<b>Practice Guide A4: Evaluating Quality in Tender Submissions</b>	This practice guide defines quality within the procurement context and reviews the requirements for evaluating quality in the accordance with regulatory requirements and the provisions made in CIDB standard documents for the evaluation of quality. It furthermore provides practical guidelines on the awarding of preferences for quality, pre-qualification on the basis of quality and the scoring of tender submissions in terms of quality and price or quality, price and preference.
<b>Practice Guide A5: Procedures for the Debarment of Contractors in Procurement</b>	This practice guide defines the terms corrupt practices and fraudulent practices and sets out the principles which underlie debarment from participation in procurements. It contains a recommended set of procedures to debar, from participation in procurements for a finite time period, those firms whose actions constitute a serious breach of the CIDB code of conduct for the Parties engaged in Construction Procurement.
<b>Practice Guide A6: Procurement in Public Private Partnerships</b>	This practice guide contextualises public private partnerships in South Africa, reviews the regulatory framework governing such transactions and provides a comprehensive set of recommendations for this method of service delivery. The recommendations cover the appointment of transaction advisors and contractors, the award of contracts and preferencing in both the prequalification and tender stages. It furthermore reviews the approach advocated by National Treasury in respect of unsolicited proposals.
<b>Practice Guide B1: Formulating and Implementing Preferential Procurement Policies</b>	This practice guide presents a range of policy options and implementation methodologies that may be pursued in the formulation of preferential procurement policies that are consistent with the provisions of the South African regulatory regime. The guide introduces the thinking behind preferential procurement policies, the manner in which such policies are implemented internationally and the constraints to implementation within South Africa. It interprets the Preferential Procurement Policy Framework Act and related

Title	Synopsis
	regulations, identifies the methods by which preferences may be applied, provides guidelines as to how preferential procurement policies may be formulated to satisfy legislative requirements and contains examples of preferential procurement policies that are drafted in accordance with this practice guide.
Practice Guide B2: Methods and Procedures for Implementing Preferential Procurement Policies	This practice guide provides a range of uniform methods and procedures for implementing a wide range of policy themes in a consistent manner. The guide presupposes that a preferential procurement policy is in place and focuses on the capturing of preferencing requirements in procurement documents. It contains sample preferencing schedules, clauses required to activate preferencing in the Tender Data where use is made of the CIDB Standard Conditions of Tender, and data capture forms.
CIDB Specification for HIV / AIDS awareness	This generic specification contains requirements applicable to the reduction of the risk of transfer of the HIV virus between and among construction workers and the local community through the following four strategies: a) raising awareness about HIV AIDS; b) providing construction workers with access to condoms; c) HIV counseling, testing and referral services; and d) Sexually Transmitted Infection diagnosis and treatment.
<b>Theme: Uniformity and efficacy in procurement documentation</b>	
CIDB Standard Conditions of Tender	These conditions of tender establish the obligations of the tenderer in preparing and submitting a tender and the undertakings of the employer in administering the tender process, evaluating tenders and the issuing of a contract. These general conditions of tender are made tender specific through Tender Data.
CIDB Standard Conditions for the Calling for Expressions of Interest	These conditions for the calling for expressions of interest establish the obligations of respondents in preparing and submitting expressions of interest and the undertakings of the employer in evaluating expressions of interest. These general conditions are made project specific through Submission Data.
Practice Guide C1: Preparing Procurement Documents	This practice guide identifies the various types of procurement documents and provides a uniform format for the drafting and compilation of these documents. It also establishes a practical approach to uniformity and standardization of procurement documents within an organization and makes recommendations regarding the forms of contracts which should be used. It also contains a number of proforma component documents to facilitate a uniform approach.
Practice Guide C2: Choosing an appropriate Form of Contract for Engineering and Construction Works	This practice guide presents the fundamental considerations in the selection of a form of contract for engineering and construction works. It presents an overview of three different series of forms of contracts and provides practical guidance of the selection of appropriate forms of contract for an organization or for use in selected pricing and contracting strategies.
<b>Theme: Contracting strategies</b>	
Practice Guide A7: Managing Construction Procurement Risks	This practice guide outlines the main elements of the risk management process. It identifies the generic sources of construction related risks, presents a range of options for risk allocation between the employer and the contractor and discusses the question of insurances. It also provides guidelines for the management of risk.
<b>Theme: Dispute resolution</b>	
Practice Guide C3: Adjudication	This practice guide provides an overview of what adjudication is, presents the principles underpinning adjudication, reviews the provisions for adjudication in standard forms of contract (NEC, FIDIC and CIDB), outlines an approach for the selection and use of adjudicators, and provides sample clauses and pro forma agreements to be included in procurement documents.
<b>Theme: Subcontracting arrangements</b>	
Practice Guide D1: Subcontracting Arrangements	This practice guide establishes acceptable practices in respect conditions of subcontract. Features of forms of subcontract which are unacceptable to the Employer and the Contractor are identified and described. It also recommends forms of subcontract which have desirable features for use with the main contracts identified in Practice Guide C2 and reviews the legal considerations in the engagement of labour only subcontractors.

<b>Theme: Joint venture arrangements</b>	
<b>Practice guide D2: Joint Venture Arrangements</b>	This practice guide identifies the reasons for forming joint ventures, reviews requirements for the formation of joint ventures in response to preferential procurement policies and presents an overview of the typical content of a joint venture agreement. It also identifies the standard joint venture agreements forms that are suitable for use or to serve as a basis for the development of an agreement.

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

<b>Normative References</b>	
<b>Title</b>	<b>Synopsis</b>
CIDB Adjudication Procedure	This document contains an adjudication procedure and an agreement for the appointment by the parties of an adjudicator. It may be used in any form of contract or subcontract.
CIDB Tender Data	This document identifies the applicable standard conditions of tender and establishes the variables in respect of a specific tender.
CIDB Standard Professional Services Contract	This standard form of contract establishes the risks, liabilities and obligations of the parties to a professional service contract.
CIDB Submission Data	This document identifies the applicable standard conditions for the calling for expressions of interest and establishes the variables in respect of a specific project.
CIDB Subcontract For Labour Only Engineering and Construction Works	This standard form of contract establishes the risks, liabilities and obligations of the parties to a labour only subcontract involving engineering and construction works.
CIDB Joint Venture Agreement	This joint venture agreement establishes the basic agreement between the joint venture partners and outlines the content of the schedules that are necessary to make the agreement project specific.
CIDB General conditions of purchase	This standard form of contract establishes the risks, liabilities and obligations of the parties to very basic supply contracts.
CIDB Contract for the Supply and Delivery of Goods	This standard form of contract establishes the risks, liabilities and obligations of the parties to a simple supply contract.
CIDB Supply of Goods (Short Contract)	This standard form of contract, based on the NEC system, establishes the risks, liabilities and obligations of the parties to a simple supply contract.
CIDB The Supply Contract	This standard form of contract, based on the NEC system, establishes the risks, liabilities and obligations of the parties to a complex supply contract.
SANS 1914-1, Resource Standard for the Participation of targeted enterprises	These six standard targeted construction procurement standards: a) describe the general requirements for engaging targeted enterprises and / or targeted labour on a contract for the provision of supplies, services or works, as relevant; b) specify the contract participation goal (the value of a percentage of the value of the contract which represents the inputs of targeted enterprises and/or targeted labour in the performance of the contract; c) set out the methods by which the contract participation goal will be measured, quantified and verified in the performance of the contract;
SANS 1914-2, Resource Standard for Participation of targeted partners in joint ventures	
SANS 1914-3, Resource Standard for Participation of targeted enterprises and targeted partners in joint ventures	
SANS 1914-4, Resource Standard for Participation of targeted enterprises and targeted labour (local resources)	
SANS 1914-5, Resource Standard for Participation of targeted labour	



Normative References	
Title	Synopsis
SANS 1914-6, Resource Standard for Participation of targeted enterprises in concession contracts	d) describe the means by which: <ul style="list-style-type: none"> <li>i) progress towards the attainment of the contract participation goal is to be monitored;</li> <li>ii) compliance with requirements will be verified and monitored; and</li> <li>iii) the contract participation goal will be adjusted to accommodate variations to the scope of the contract.</li> </ul>
SANS 1921-1, Construction and Management Requirements for Works Contracts: Part 1: General	This standard establishes general construction and management requirements, which are applicable in a wide range of engineering and construction works contracts
SANS 1921-3, Construction and management requirements for works contracts, Part 3: Structural steelwork	This specification contains requirements for managing the fabrication and erection of structural steelwork.
SANS 10403, Formatting and Compilation of Construction Procurement Documents	This standard establishes at both prime and subcontract level: <ul style="list-style-type: none"> <li>a) a uniform format for the compilation of procurement documents for supplies, services and engineering and construction works contracts; and</li> <li>b) the general principles for compiling procurement documents in respect of supplies, services and engineering and construction works.</li> </ul>
SANS 10396, Implementing Preferential Procurement Policies Using Targeted Procurement Procedures	This standard: <ul style="list-style-type: none"> <li>a) sets out the issues and principles which should be considered when formulating preferential procurement policies and developing associated implementation mechanisms;</li> <li>b) sets out the principles associated with the engagement of targeted enterprises and targeted labour;</li> <li>c) establishes a range of techniques and mechanisms which may be used to provide a framework within which access to markets for targeted enterprises and / or targeted labour can be provided and goals relating to the engagement of such enterprises and / or labour can be set, monitored and evaluated at both project and programme level;</li> <li>d) establishes targeting frameworks and strategies which can be used with a number of different procurement regimes;</li> <li>e) describes techniques for the monitoring and evaluation of the outcomes of a preferential procurement policy;</li> <li>f) provides guidance as to how targeted procurement procedures can be activated in procurement documents; and</li> <li>g) provides guidance on the design and implementation of programmes associated with the implementation of a preferential procurement policy.</li> </ul>
SAFCEC Joint venture agreement	This joint venture agreement comprises the agreement itself and the heads of agreement between the partners in a joint venture.
FIDIC Joint Venture Consortium Agreement	This joint venture agreement is intended only for joint ventures between professional service providers and is not suitable for use by contractors
BIFSA Non-Nominated Subcontract for use with the JBCC Series 2000 Principal Building Agreement	These forms of subcontract establish the risks, liabilities and obligations of the parties to a subcontract
BIFSA Standard Subcontract Agreement 1995 edition (Amended 2000), for use with Principal Building Agreements other than the JBCC Principal Building Agreement.	
BIFSA Labour-only sub-contract	
JBCC series 2000 Nominated / selected Subcontract Agreement	

Normative References	
Title	Synopsis
JBCC series 2000 Engineering General Conditions	
NEC Engineering and Construction Subcontract	
NEC Engineering and Construction Short Subcontract	
SAFCEC General conditions of subcontract (2003 edition)	
FIDIC Conditions of Contract for Construction ("Red Book")	These forms of contract establish the risks, liabilities and obligations of the parties to a contract
FIDIC Conditions of Contract for Plant and Design-Build ("Yellow Book")	
FIDIC Conditions of Contract for FIDIC EPC/Turnkey Projects ("Silver Book")	
FIDIC Short Form of Contract ("Green Book")	
JBCC series 2000 Principal Building Agreement	
JBCC series 2000 Minor Works Agreement	
NEC Engineering and Construction Short Contract (ECSC)	
NEC Engineering and Construction Contract (ECC)	
NEC - The Professional Services Contract	This form of contract establish the risks, liabilities and obligations of the parties to a professional services contract
NEC Term services contract	This form of contract establish the risks, liabilities and obligations of the parties to a professional services contract

## BOARD NOTICE 127 OF 2003

**CONSTRUCTION INDUSTRY DEVELOPMENT BOARD****CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT, 2000 (ACT NO.38  
OF 2000)****CODE OF CONDUCT FOR ALL PARTIES ENGAGED IN  
CONSTRUCTION PROCUREMENT**

The Construction Industry Development Board (CIDB) is a Schedule 3A public entity established in terms of the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000) (the Act) to provide leadership to stakeholders to stimulate sustainable growth, reform and improvement of the construction sector for effective delivery and the industry's enhanced role in the country's economy.

Section 5(4) of the Act mandates the CIDB to establish and promote uniform and ethical standards *"that regulate the actions, practices and procedures of parties engaged in construction contracts"* and stipulates that the CIDB *"must publish a code of conduct for all construction-related procurement and all participants involved in the procurement process..."*

After publishing a draft code of conduct by General Notice No. 2215 in Gazette No. 25351 of 22 August 2003, for comment and evaluating comments received, the CIDB has, in terms of section 5(4) of the Act, published the Code of Conduct contained in the Schedule hereof.

  
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BRIAN CAMERON BRUCE

CHAIRPERSON: CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

## SCHEDULE CODE OF CONDUCT FOR THE PARTIES ENGAGED IN CONSTRUCTION PROCUREMENT

### PREAMBLE

Good corporate governance is being introduced throughout the world as a business imperative offering competitive advantage. Investors and employers prefer to do business with those business enterprises that uphold the key elements of corporate governance, namely *discipline, transparency, independence, accountability, responsibility, fairness and social responsibility*.

To participants in the construction industry, good corporate governance is of particular importance and many of the employers (clients), as well as contractors, material manufacturers and suppliers are under obligation to adhere to the provisions of the King Report on Corporate Governance for South Africa, 2002. Professional service providers are also obliged, in their role as trusted adviser, to assist clients to comply with these provisions.

In this context the development of the construction industry will be promoted by participant and stakeholder organisations that:

- Have clearly stated and enacted corporate values;
- Ensure that they perform efficiently, responsibly, accountably, transparently, and with probity;
- Recognise the legitimacy of interest of defined stakeholders;
- Engage in long-term relationships;
- Adopt agreed codes to tackle corruption and persist in the enforcement thereof;
- Give due recognition to the respect for human rights;
- Respect the well-being of employees treating them fairly and with cultural sensitivity;
- Practice and encourage greater environmental and social responsibility;
- Avoid the use of harmful products and processes;
- Promote collaborative partnerships with communities;
- Work to build capacity;
- Recognize need for profitability in the private sector to ensure a vibrant and sustainable industry;
- Guard against abuse of power by the stronger party in contractual relationships;
- Recognize the inherently dangerous nature of the industry and give priority to occupational health and the safety of all employees and the public; and
- Engage with and share best practice.

A code of conduct for all participants in the construction procurement process is a necessary condition for the achievement of these principles.

The construction industry operates in a uniquely project-specific environment, continuously combining different clients, consulting professions, as well as different contractors and subcontractors in a variable supply chain. Procurement arrangements, which also vary considerably, bind this supply chain and define the obligations, liabilities and risks that link the parties together in the delivery process.

The conduct of parties throughout the supply chain impacts on the ability of the construction industry to deliver value and to perform efficiently and competitively. A high standard of conduct is essential to the growth, development and sustainability of



enterprises and to the objectives of empowerment and transformation. It impacts directly on project costs, timely completion and delivered quality. Poor conduct opens a window on corruption and inflates the cost of development to South African society.

A common code of conduct to guide and regulate the behaviour of parties engaged in construction-related procurement is necessary to establish the standards of behaviour that participants may expect from each other and against which their behaviour can be measured.

This code of conduct represents an important step in the management of integrity and the creation of an environment within which business can be conducted in a fair and transparent manner. It is also forms an essential first line of defense in combating the scourge of corruption.

This six-point Code of Conduct deliberately avoids the pitfall of detail. Instead the Code of Conduct is published with a set of examples that illustrate good conduct and, by implication, conduct that would breach this code.

## **1 PARTIES INVOLVED IN CONSTRUCTION PROCUREMENT**

This Code of Conduct applies to the various parties involved in public and private procurement relating to the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure. In this context, it includes work associated with the provision of supplies, services and engineering and construction works and disposals.

The parties that may be directly and indirectly involved include the following:

**Agent:**

a natural or juristic person or partnership who is not an employee of the employer who acts on the employer's behalf;

**Note:** An agent can act in terms of a contract with an employer, in which case, the agent is also a contractor. An agent may also be a tenderer prior to the award of the contract.

**Contractor:**

a natural or juristic person or partnership who contracts with an employer to perform a contract;

**Note:** Contracts can relate to services, supplies and engineering and construction works or disposals.

**Employer:**

a natural or juristic person, partnership, or organ of state entering into the contract with the contractor for the provision of supplies, services, or engineering and construction works;

**Note:** An institution (a public body i.e. a department, trading entity, constitutional institution, municipality, public entity or municipal entity) which contracts with a contractor is an employer. A contractor who engages a supplier, service provider or a subcontractor is also an employer. An employer is often referred to as a "client".

**Employee:**

a natural person in the employ of an agent, contractor, employer, subcontractor or tenderer and who acts on their behalf.

**Note:** An employee includes an official in an organ of state.

**Representative:**

an elected person who holds a public office or a member of a board or controlling body of an employer who is not an employee;

**Subcontractor:**

a natural or juristic person or partnership who is contracted by the contractor to assist the latter in the performance of his contract by providing certain supplies, services, or engineering and construction works.

**Tenderer:**

a natural or juristic person or partnership who submits a tender offer or an expression of interest to perform a contract in response to an invitation to do so.

## **2 PRINCIPLES GOVERNING THE CONDUCT OF PARTIES**

In the interests of a healthy industry that delivers value to clients and society; the parties in any public or private construction-related procurement should in their dealings with each other:

- 2.1 Behave equitably, honestly and transparently.
- 2.2 Discharge duties and obligations timeously and with integrity.
- 2.3 Comply with all applicable legislation and associated regulations.
- 2.4 Satisfy all relevant requirements established in procurement documents.
- 2.5 Avoid conflicts of interest.
- 2.6 Not maliciously or recklessly injure or attempt to injure the reputation of another party.

## **3 ACCEPTABLE CONDUCT**

The code of conduct serves to establish the broad framework within which an action, or default, by any party to the procurement process may be judged. Any action, or default, which conflicts with the code, is unacceptable.

The following examples are not exhaustive, but serve to highlight acceptable actions and defaults that are more commonly encountered.

### **Conduct of the agent**

The agent or his employees should:

- Strictly observe the code of conduct laid down by the body governing his profession.
- Act in a fair and equitable manner towards all other parties in the procurement process and take account of the legitimate and reasonable rights of them all.
- Not accept gifts, favours or other considerations, of anything more than token value from any other party to the procurement process.
- Not unnecessarily, or through lack of diligence, cause delay by the contractor or the client in fulfilling their obligations.

- Not undermine the development objectives of the employer through tokenism or fronting.
- Disclose any circumstance which may possibly be construed as constituting a conflict of interest and recuse himself from deliberations in such matters.
- Not engage in practices that gives one tenderer an improper advantage over another.

#### **Conduct of the contractor**

The contractor or his employees should:

- Undertake the contract with the objective of satisfying the requirements of the employer by observing the spirit as well as complying with the letter of the contract and, in pursuit of this objective, co-operate with all other parties in the procurement process.
- Aim to meet all statutory and contractual obligations fully and timeously in regard to conditions of employment, occupational health and safety, training, fiscal matters etc.
- Not attempt to influence the judgement, or actions, of agents, employees, or representatives by inducements of any sort.
- Employ subcontractors only on the basis of fair, unbiased, written subcontracts.
- Not engage in unfair or unethical practices in dealings with subcontractors.
- Not make spurious claims for additional payment or time.
- Not approach any representative directly in connection with a contract, save for a legitimate purpose.
- Not undermine the development objectives of the employer through tokenism or fronting.
- Not engage in collusive practices that have direct or indirect adverse impacts on the cost of the project to the employer.

#### **Conduct of the employer**

The employer, his employees, or agent should:

- Not invite tenders without having a firm intention to proceed with the procurement.
- Ensure that the basis on which tenders will be evaluated is clearly set out in the tender documents and that tenders are evaluated and awarded accordingly.
- Employ contractors only on the basis of fair and equitable written contracts
- Not accept gifts, favours or other considerations, of anything more than token value from any other party to the procurement process.
- Ensure that the procurement documents are clear and comprehensive and set out the rights and obligations of all parties.
- Not breach the confidentiality of information, particularly intellectual property, provided by tenderers in support of their tender submissions.
- Not engage in unfair or unethical practices in dealings with subcontractors including the practice of trading one subcontractor off against another in an attempt to obtain lower prices.
- Ensure that all tenderers are fairly treated and that tender offers are evaluated without bias.
- Ensure that transparency is maintained in the tendering process. This implies, under normal circumstance, inviting tenders as widely and publicly as possible, stating clearly any prequalification criteria and considering only

those who qualify, opening tenders in public and reading out / making available key information, such as tender prices, basic award criteria and times required for completion, and, in due course, making known to unsuccessful tenderers the outcome of the evaluation process.

- Ensure that his obligations in terms of contracts with contractors and agents are scrupulously and timeously met, particularly in regard to making payments and giving decisions.
- Ensure that legal requirements and principles are upheld in relation to safety, health, the environment and sustainable delivery management.

#### **Conduct of employees**

Employees should:

- Conduct themselves in the manner befitting the role which they are to perform in procurement.
- Strictly observe any code of conduct laid down by their respective employers and the provisions of all legislation and regulations governing procurement.
- Perform their duties in an unbiased and conscientious manner, bearing in mind the legitimate interest of all parties to the procurement process and, where relevant, the public.
- Ensure that they are not responsible for an unacceptable action, or default, being attributed to the respective employers.
- Not allow themselves to be influenced in the execution of their duties by any consideration other than the legitimate and reasonable interests of the respective employers.
- Not accept any gifts, favours or other considerations, of anything more than token value from any other party to the procurement process.
- Where they act on behalf of an employer, administer contracts in an even handed manner.
- Disclose any circumstance which may possibly be construed as constituting a conflict of interest and recuse themselves from deliberations in such matters.

#### **Conduct of the representative**

The representative should:

- Perform his duties in an unbiased and conscientious manner, bearing in mind the legitimate interest of all parties to the procurement process and the public.
- Not entertain representations from any agent, tenderer, contractor, or subcontractor, in regard to a procurement, except through the employer or such person as may be delegated by the employer to act in the procurement.
- Not allow himself to be unduly influenced by, or accept any gifts, favours or other considerations from any party which might have an interest in the procurement process.
- Disclose any circumstance which may possibly be construed as constituting a conflict of interest and recuse himself from deliberations in such matters.

#### **Conduct of subcontractors**

The subcontractor should, insofar as is relevant, act in the same way as the contractor is expected to act and behave in a circumspect manner and not undermine the position of any contractor that has been provided a price in relation to a particular tender.

#### **Conduct of tenderers**



The tenderer, his employees or agent should:

- Not, except for the purpose of joint venture formation or collective action to deal with unfair conditions or other faults in documentation, become involved in collusion with other tenderers, or potential tenderers.
- Not exchange information regarding tenders with any other tenderer prior to the closing time and date for tenders.
- Not knowingly price his tender in such a way as to gain an unfair advantage from an obvious error, or oversight, in the tender documents.
- Not attempt to influence the tender evaluation process.
- Not approach any representative or employee directly in connection with a tender.

#### **4 ENFORCEMENT OF THE CODE OF CONDUCT**

Section 29 of the Construction Industry Development Board Act, 2000 makes provision for the enforcement of this code of conduct. To this end, the Board may convene and conduct an enquiry into any breach of the code and to subpoena any person to appear in person at or produce documents relating to an inquiry. The Board may, as appropriate, sanction those who breach the code of conduct by issuing a warning or a fine, referring the matter to the South African Police Services, referring the matter where a breach is in respect of an official to the accounting officer for action in terms of the Public Service Act, deregistering contractors for a period of time or referring the matter to a statutory body that has jurisdiction over the matter. Regulations are being prepared in this regard.

Sanctions by the Board are, however, a reactive way to enforce the code of conduct. A more proactive way is for all parties to commit to adhere to the code and to do business only with those who do likewise. Should this be done, adherence to the principles of the code will form an integral part of all business processes.

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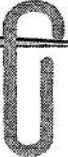
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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001

Publications: Tel: (012) 334-4508, 334-4509, 334-4510

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