

## DEPARTMENT OF PUBLIC WORKS

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## Construction Industry Development Board

**cidb Best Practice Project Assessment Scheme:  
Standard for Minimum Requirements for  
Engaging Contractors and Sub-Contractors on  
Construction Works Contracts**

31 October 2017

In terms of sections 5(2) of the Construction Industry Development Board Act, 2000 (Act no. 38 of 2000) (the Act), the Construction Industry Development Board is empowered to promote best practice Standards. The Board has identified the cidb Standard for Minimum Requirements for Engaging Contractors and Sub-Contractors on Construction Works Contracts as a best practice Standard on work packages of a value greater than that equivalent to the upper limit of the tender value range of Grade 1.

This Standard establishes minimum requirements in the appointment of principal contractors and sub-contractors on construction works contracts in terms of compliance in terms of good standing with COIDA, registration with the relevant bargaining council(s), if any, a written contract between the principal contractor and sub-contractors, and payment requirements in terms of a contract.

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Chairperson: Construction Industry Development Board

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# Standard for Minimum Requirements for Engaging Contractors and Sub-Contractors on Construction Works Contracts

(31 October 2017)

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## Standard for Minimum Requirements for Engaging Contractors and Sub-Contractors on Construction Works Contracts

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## Standard for Minimum Requirements for Engaging Contractors and Sub-Contractors on Construction Works Contracts

### Foreword

The CIDB Act (Act 38 of 2000) requires that the Board must establish a *Best Practice Project Assessment Scheme* based on the best practices identified by the Board. All construction contracts above a prescribed tender value will then be subject to an assessment of compliance with best practice standards and guidelines published by the Board.

The aim of this best practice Standard for Minimum Requirements for Engaging Contractors and Sub-Contractors on Construction Works Contracts is to promote uniformity in minimum requirements in the appointment of principal contractors and sub-contractors on construction works contracts. Private and public sector employees are encouraged to adopt this Standard.

This Standard will be subject to a review every five years, or sooner if required.

### 1. Scope

This Standard establishes minimum requirements in the appointment of principal contractors and sub-contractors on construction works contracts in terms of compliance in terms of good standing with COIDA, registration with the relevant bargaining council(s), if any, a written contract between the principal contractor and sub-contractors, and payment requirements in terms of a contract.

Subject to 3(c), such requirements are only applicable on work packages of a value greater than that equivalent to the upper limit of the tender value range of Grade 1.

### 2. Terms and Definitions

For the purposes of this document, the following definitions apply:

**Construction Industry Development Board (cidb):** the Board established in terms of the Construction Industry Development Board Act of 2000 (Act 38 of 2000).

**COIDA:** Compensations for Occupational Injuries and Disease Act

**construction works:** the provision of a combination of goods and services arranged for the development, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling or demolition of a fixed asset including building and engineering infrastructure.

**employer:** person or organization entering into the contract with the principal contractor for the provision of goods, services, or engineering and construction works.

**employer's representative:** person authorized to represent the employer and named as such in the contract data.

**principal contractor:** contractor who contracts with the employer for the provision of construction works, and who may subcontract part of this contract.

**sub-contractor:** the contractor who contracts with the principal contractor for the provision of portions of construction works.

### 3. Requirements

- a) Where applicable in terms of the Compensations for Occupational Injuries and Disease Act (COIDA), principal contractors and sub-contractors must have a letter of good standing in terms of COIDA.
- b) Principal contractors and sub-contractors must have proof of registration with the relevant bargaining council(s), if any, duly established in terms of Part C of the Labour Relations Act 66 of 1995, as amended.
- c) A written contract must exist between the principal contractor and sub-contractor using the latest Edition of one of the forms of contracts identified in items (i) to (vi) below, unless the publishers of such forms of contracts indicate that such a form of contract is not suited for the intended application in which case a modified form of the most appropriate form of contract must be used. Note that:
  - The standard forms of contract shall be used with minimal contract amendments which do not change their intended usage and shall only be amended when absolutely necessary to accommodate special needs.
  - Each of the forms of subcontract may only be used in conjunction with the relevant Edition of the principal agreement for which it has been issued, where applicable.
  - The SAFCEC General Conditions of Subcontract should be used where the General Conditions of Contract for Construction Works (GCC) is used for the principal contractor.
  - The MBSA Domestic Subcontract Agreement and the MBSA Labour Only Subcontract Agreement should be used where the Joint Building Contracts Committee (JBCC) is used for the principal contractor.
  - i) Construction Industry Development Board: Standard Subcontract (labour only);
  - ii) The Joint Building Contracts Committee (JBCC): Nominated / Selected Subcontract Agreement (NSSA);
  - iii) New Engineering Contract (NEC, as published by the Institution of Civil Engineers);
    - NEC Engineering and Construction Subcontract;
    - NEC Engineering and Construction Short Subcontract;
  - iv) International Federation of Consulting Engineers (FIDIC);
    - Conditions of Subcontract for Construction (for building and engineering works designed by the Employer);
  - v) South African Forum of Civil Engineering Contractors (SAFCEC) - General Conditions of Subcontract; and
  - vi) Master Builders South Africa (MBSA):
    - Domestic Subcontract Agreement; and
    - Labour Only Subcontract Agreement.

- d) The date on which payment to the sub-contractor becomes due and payable is the date determined in the contract, but may not be later than 30 days after the date on which the sub-contractor has submitted a statement for payment or a claim for payment to the principal contractor in relation to construction works, goods or services completed or delivered in accordance with the contract between the principal contractor and the sub-contractor.
- e) Where a sub-contractor has not been paid within 30 days after the date on which the sub-contractor has submitted a statement for payment or a claim for payment to the principal contractor for construction works, goods or services completed or delivered in accordance with the contract, the employer shall upon a written request by the sub-contractor confirm in writing within 15 days whether the principal contractor has been paid in full or in part by the employer in respect of construction works, goods or services completed or delivered by the sub-contractor.
- f) For work packages of a value equal to or greater than that equivalent to the lower limit of the tender value range of Grade 7, the written contract between the principal contractor and sub-contractor may not contain any provision making payment to a subcontractor conditional on the principal contractor receiving payment from a third person.

#### 4. Records

The principal contractor shall submit a report substantiating compliance with this Standard in an acceptable format to the employer's representative for acceptance within 15 days of achieving practical completion.

The employer's representative shall certify the submission made by the principal contractor.

#### 5. Sanctions

In the event that the principal contractor fails to substantiate compliance with this Standard, the sanctions provided for in the contract or order between the employer and the principal contractor shall apply.

Note: The contract establishes the sanctions that will apply. These are set out in a tender evaluation schedule, the scope of work or contract data.