

## GOVERNMENT NOTICE

### DEPARTMENT OF PUBLIC WORKS

No. 842

18 August 2006

#### AMENDMENT OF REGULATIONS ISSUED 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.

#### SCHEDULE

##### Definitions

1. In these Regulations, unless the context otherwise indicates, every word takes the meaning as defined in the Act, and –

“the Regulations” means the Construction Industry Development Regulations, published by Government Notice No. 692 in Gazette No. 26427 of 9 June 2004 as amended by Government Notice No. 1333 of 12 November 2004 and Government Notice No. 751 of 22 July 2005, published in Government Gazette No. 27831 of 22 July 2005.

##### Amendment to regulation 7

2. Regulation 7 of the Regulations is amended by –

- (a) the substitution for paragraphs (b) in subregulation (4) of the following paragraph:
  - “(b) if applicable, complete financial statements of the contractor for the two financial years immediately preceding the application, certified by a person who is required by law to certify those financial statements and in a format acceptable to the Board;”;
- (b) the substitution for paragraph (d) in subregulation (4) of the following paragraph:
  - “(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;”;
- (c) the insertion in subregulation (4) of the following paragraph after paragraph (d):
  - “(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);”;

(d) the insertion of the following subregulation after subregulation (7):

“(8) If a contractor does not fully comply with a request from the Board to provide further information in relation to his or her application within 90 days from the date of that request, the Board may cancel the application and must refund the annual fees paid by the contractor.

(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.”.

#### **Amendment of regulation 8**

3. Regulation 8 of the Regulations is amended by

(a) the substitution for paragraph (a) in subregulation (1) of the following paragraph:

“(a) if applicable, complete financial statements of the contractor for the two financial years immediately preceding the application, certified by a person who is required by law to certify that financial statement and in a format acceptable to the Board; or”;

(b) the insertion in subregulation (1) of the following paragraph after paragraph (d):

“(dA) in the case of a trust, a copy of trust deed as contemplated in the Trust Property Act, 1988;”;

(c) the insertion of the following subregulations after subregulation (1):

“(1A) If a contractor does not fully comply with a request from the Board to provide information in relation to his or her application, within 90 days from the date of that request, the Board may cancel the application and must refund the annual fees paid by the contractor.

(1B) 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.”.

#### **Amendment of regulation 10**

4. Regulation 10 of the Regulations is amended by the substitution of subregulation (4) for the following subregulation:

“(4) The assessment committee may, if it 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”.

#### **Amendment of regulation 11**

5. Regulation 11 of the Regulations is amended by the insertion of the following subregulation after subregulation (3):

“(3A) Notwithstanding subregulation (3)(a), 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
- (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.”.

#### **Substitution of regulation 19**

6. Regulation 19 of the Regulations is substituted for the following regulation:

##### **“Exemption**

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

- (a) in relation to provision of homes as contemplated in the Housing Consumer Protection Measures Act, 1998 (Act No. 95 of 1998); or
- (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,

is exempt from these regulations.”.

#### **Substitution of regulation 23**

7. Regulation 23 of the Regulations is substituted for the following regulation:

##### **“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.”.

#### **Amendment of regulation 25**

8. Regulation 25 of the Regulations is amended by-
- (a) the insertion of the following subregulation after subregulation (1A):  
“(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.”.
- (b) by the substitution of paragraph (a) in subregulation (3) for the following paragraph:
- (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
    - (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.”.
- (c) the insertion of the following subregulation after subregulation (7):
- “(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.”.

#### **Amendment of regulation 38**

9. Regulation 38 of the Regulations is amended by the insertion of the following subregulation after subregulation (4):

“(4A) For the purpose of the fair and equitable implementation of these Regulations, the Board may, , notwithstanding anything to the contrary contained in these Regulations, until 15 November 2007 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.”.

**Short Title and commencement**

10. These Regulations are called the Construction Industry Development Amendment Regulations, 2006 and commences on the date of publication.