

REPUBLIC OF SOUTH AFRICA

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD BILL

(As introduced in the National Council of Provinces as a section 76 Bill; explanatory summary of Bill published in Government Gazette No. 21477 of 15 August 2000) (The English text is the official text of the Bill)

(SELECT COMMITTEE ON PUBLIC SERVICES)

[B 59—2000]

IRIPHABHULIKHI YASENINGIZIMU AFRICA

UMTHETHOSIVIVINYWA WEBHODI ETHUTHUKISA IMBONI YEZOKWAKHA

(Njengokwethulwa kumKhandlu weziFunda kuZwelonke waba njengomthethosivivinywa wesigaba 76 washicilelwa kwiGazethi kaHulumeni enguNombolo 21477 yangomhlaka 15 August 2000) (Umqulu weSingisi yiwona mqulu womthethosivivinywa osemthethweni)

(uNG IKOMIDI eHLAZIYAYO EPHALAMENDE QONGQOSHE WEZEMISEBENZI)

[B 59—2000]

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BILL

To provide for the establishment of the Construction Industry Development Board; to implement an integrated strategy for the reconstruction, growth and development of the construction industry and to provide for matters connected therewith.

PREAMBLE

WHEREAS the construction industry plays an indispensable role in the South African economy in providing the physical infrastructure which is fundamental to the country's development;

WHEREAS the construction industry experiences instability and interconnected structural problems which are associated with the declining demand in recent decades, the volatile nature of the demand and the consequent shedding of labour;

WHEREAS the construction industry operates in a uniquely project-specific and complex environment, combining different investors, clients, contractual arrangements and consulting professions; combining different site conditions, design, materials and technologies; combining different contractors, specialist subcontractors and the workforce assembled for each project;

WHEREAS the development of the emerging sector is frustrated by its inability to access opportunity, finance and credit as well as vocational and management training;

WHEREAS investment in physical infrastructure is constrained and there is a need to promote effective public sector spending and private sector investment and to interpret investment trends;

WHEREAS the construction industry impacts directly on communities and the public at large and its improved efficiency and effectiveness will enhance quality, productivity, health, safety, environmental outcomes and value for money to South African society;

WHEREAS the specialised and risk-associated nature of construction places an onus on the public sector client to continuously improve its procurement and delivery management skill in a manner that promotes efficiency, value for money, transformation and the sustainable development of the construction industry;

WHEREAS the development of the industry requires leadership and the active promotion of best practice; and

WHEREAS Government has a vision of a construction industry development strategy that promotes stability, fosters economic growth and international competitiveness, creates sustainable employment and addresses historic imbalances as it generates new construction industry capacity;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa,
as follows:

CHAPTER ONE

DEFINITIONS

The purpose of this chapter is to define words to which a meaning is attached which expands on the dictionary meaning of the word. 5

Definitions

1. In this Act, unless the context otherwise indicates—
 - (a) “best practice” means a desirable and appropriate standard, process, procedure, method or system in relation to the delivery process and the life cycle of fixed assets; 10
 - (b) “best practice contractor recognition scheme” means the best practice recognition scheme referred to in section 21;
 - (c) “best practice project assessment scheme” means the best practice project assessment scheme referred to in section 23; 15
 - (d) “Board” means the Construction Industry Development Board established by section 2;
 - (e) “chairperson” means the chairperson of the Board appointed in terms of section 6(11)(a);
 - (f) “chief executive officer” means the chief executive officer appointed in terms of section 10; 20
 - (g) “client” means a person, body or organ of state who enters into a contract to procure construction works;
 - (h) “construction industry” means the broad conglomeration of industries and sectors which add value in the creation and maintenance of fixed assets within the built environment; 25
 - (i) “contractor” means a person or body of persons who undertakes to execute and complete construction works;
 - (j) “construction works” means 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; 30
 - (k) “emerging enterprise” means an enterprise which is owned, managed and controlled by previously disadvantaged persons and which is overcoming business impediments arising from the legacy of apartheid; 35
 - (l) “emerging sector” means that sector of the construction industry which comprises emerging enterprises;
 - (m) “member” means a member of the Board appointed in terms of section 6;
 - (n) “Minister” means the Minister of the National Department responsible for Public Works; 40
 - (o) “organ of state” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - (p) “policy” means Government policy that impacts on construction industry development;
 - (q) “prescribed” means prescribed by regulation in terms of section 33; 45
 - (r) “project” means a construction works contract or a series of related construction work contracts;
 - (s) “register” means the national register of contractors referred to in section 16 or the register of projects established in terms of section 22;
 - (t) “regulation” means a regulation made under section 33 of this Act; and 50
 - (u) “this Act” includes the regulations.

CHAPTER TWO

CONSTRUCTION INDUSTRY DEVELOPMENT BOARD

The purpose of this chapter is to establish the Construction Industry Development Board and to provide for its objects, powers, functions and duties and to provide for administrative matters. 5

Establishment of Board

2. The Construction Industry Development Board is established as a juristic person.

Independence of Board

3. The Board must perform its functions free from undue influence.

Objects of Board 10

4. The objects of the Board are to—
- (a) promote the contribution of the construction industry in meeting national construction demand and in advancing—
 - (i) national, social and economic development objectives;
 - (ii) industry performance, efficiency and competitiveness; and 15
 - (iii) improved value to clients;
 - (b) provide strategic leadership to construction industry stakeholders to stimulate sustainable growth, reform and improvement of the construction sector;
 - (c) determine and establish best practice that promotes—
 - (i) improved industry stability; 20
 - (ii) improved industry performance, efficiency and effectiveness;
 - (iii) procurement and delivery management reform;
 - (iv) improved public sector delivery management;
 - (v) national social and economic objectives, including—
 - (aa) growth of the emerging sector; 25
 - (bb) labour absorption in the construction industry;
 - (cc) improved labour relations; and
 - (dd) positive safety, health and environmental outcomes;
 - (vi) human resource development in the construction industry;
 - (d) promote best practice through the development and implementation of appropriate programmes and measures aimed at best practice and improved performance of public and private sector clients, contractors and other participants in the construction delivery process; 30
 - (e) promote uniform application of policy with regard to the construction industry throughout all spheres of Government; 35
 - (f) promote, establish or endorse—
 - (i) uniform standards; and
 - (ii) ethical standards, that regulate the actions, practices and procedures of parties engaged in construction contracts; 40
 - (g) promote sustainable growth of the construction industry and the participation of the emerging sector therein;
 - (h) promote appropriate research on any matter related to the construction industry and its development;
 - (i) implement policy on construction industry development; 45
 - (j) advise the Minister on policy and programmes which impact on construction industry growth and development; and
 - (k) promote any other related objective.

Powers, functions and duties of Board

5. (1) To provide strategic leadership, the Board—
- (a) must promote and implement policies, programmes and projects aimed at, amongst others—
 - (i) support of emerging enterprises sector; 5
 - (ii) work process transformation;
 - (iii) improved labour relations;
 - (iv) human resource development;
 - (v) innovation and best practice processes;
 - (vi) simplification of regulatory procedures; 10
 - (vii) procurement reform;
 - (viii) standardisation and uniformity in procurement documentation, practices and procedures;
 - (ix) best practice and value for money with regard to design;
 - (x) regional co-operation; and 15
 - (xi) international competitiveness;
 - (b) may initiate policy refinement and development in cooperation with Government;
 - (c) must facilitate communication between construction industry stakeholders, all spheres of Government and statutory bodies; 20
 - (d) must establish a construction industry stakeholders' forum as contemplated in section 13; and
 - (e) must provide information to stakeholders on best practice, industry performance and improvement and generally on matters affecting the construction industry. 25
- (2) To promote best practice, the Board—
- (a) must, in consultation with the Minister, determine best practice priorities for the construction industry;
 - (b) must, by notice in the *Gazette*, publish best practice standards and guidelines;
 - (c) may develop targets and performance indicators related to those best practice standards and guidelines and establish mechanisms to monitor their implementation and evaluate their impact; 30
 - (d) must establish and maintain a national register of contractors as contemplated in Chapter Four, which provides for categories of contractors in a manner which facilitates public sector procurement and which integrates other statutory contractor registers; 35
 - (e) must establish and maintain a best practice contractor recognition scheme as contemplated in section 21, which promotes contractor development and monitors contractor performance;
 - (f) must establish and maintain the register of projects and the best practice project assessment scheme contemplated in Chapter Four, for the promotion, assessment and evaluation of best practice on construction contracts; 40
 - (g) may establish and maintain a register of suppliers, manufacturers or service providers in the construction industry. The provisions of Chapter Four apply with the necessary changes required by the context, to that register; and 45
 - (h) may develop and promote other programmes and projects that promote best practice.
- (3) To advance the uniform application of policy with regard to construction industry development, the Board—
- (a) must promote such uniform application of policy throughout all spheres of Government; 50
 - (b) must identify delivery constraints in the public sector and advise the Minister on policy, practice and procedural reform in relation to public sector client performance and public sector capacity improvement;
 - (c) must, within the framework of the procurement policy of Government, 55

- promote the standardisation of the procurement process with regard to the construction industry;
- (d) may advise all organs of state on human resource development in relation to public sector management of construction delivery; and
- (e) in consultation with relevant institutions and professional bodies, develop and promote appropriate training programmes for public sector officials. 5
- (4) To promote uniform and ethical standards within the construction industry, the Board—
- (a) must publish a code of conduct for all construction-related procurement and all participants involved in the procurement process; and 10
- (b) may initiate, promote and implement national programmes and projects aimed at the standardisation of procurement documentation, practices and procedures.
- (5) To promote sustainable growth of the construction industry and the participation of the emerging sector therein, the Board— 15
- (a) may monitor economic activity within the construction industry and the measures according to which public sector spending is scheduled;
- (b) must consult with all organs of state to identify construction-related budgets and the application thereof;
- (c) may assess the impact of public expenditure on the construction industry and advise the Minister accordingly; 20
- (d) may promote export of construction goods and services;
- (e) may, subject to the Statistics Act, 1999 (Act No. 6 of 1999), collect statistics from contractors, suppliers, manufacturers and service providers in the construction industry, including the size and nature of their business undertakings and the size and nature of the projects they undertake; 25
- (f) may conduct surveys of the construction industry for the purpose of this Act;
- (g) may monitor national programmes aimed at, amongst others—
- (i) promotion of the emerging sector;
- (ii) work process transformation; 30
- (iii) innovation and best practice processes;
- (iv) streamlining regulation and procedures;
- (v) procurement reform;
- (vi) standardisation and uniformity in procurement documentation, practices and procedures; 35
- (vii) best practice and value for money with regard to design;
- (viii) regional co-operation; and
- (ix) international competitiveness; and
- (h) must publish quarterly and annual reports on the state of the industry.
- (6) To promote appropriate research, the Board— 40
- (a) may develop, promote and update a construction industry research agenda that defines national development priorities; and
- (b) may establish a knowledge centre through which industry and clients can access knowledge and experience on innovation and best practice.
- (7) To implement policy, the Board— 45
- (a) must submit an annual business plan to the Minister for approval, subject to section 32;
- (b) must annually report to the Minister on the implementation of its business plan; and
- (c) must, at least once every five years, obtain an independent evaluation of itself regarding its effectiveness. 50

- (8) The Board may advise the Minister on policy and legislation impacting on the construction industry or propose amendments to this Act to the Minister.
- (9) The Board may advise the Minister on the effectiveness of the implementation of policies, programmes or legislation developed by the Minister or by the Board.
- (10) The Board may— 5
- (a) provide services in relation to its objects to any person, body of persons or organ of state and charge fees for those services;
 - (b) establish a committee to assist it in the performance of its functions and appoint any person as a member of that committee;
 - (c) enter into an agreement with any other person, body of persons or organ of state to perform any of its functions; and 10
 - (d) perform such other functions as may be prescribed and generally do all such things as it considers necessary to achieve the objects of this Act.

Composition of Board

6. (1) The Board consists of not fewer than nine, but not more than 13 members, 15 appointed by the Minister.
- (2) The Minister may, by notice in the *Gazette*, determine the criteria for nominations in terms of this section, taking into account the objects, powers, functions and duties of the Board as contemplated in sections 4 and 5.
- (3) In the appointment of the members of the Board, the Minister must take 20 cognisance of the need to achieve a reasonable balance of expertise and knowledge of the construction industry, whilst broadly reflecting the race, gender and geographic composition of the Republic.
- (4) When necessary, the Minister must invite, by notice in the *Gazette* and any other newspaper which is widely read throughout the Republic, nominations of persons as 25 candidates for positions on the Board, to be submitted to the Minister within a period of at least 60 days.
- (5) The invitation referred to in subsection (4) must specify the required criteria.
- (6) On receipt of any nomination, the Minister must, within 60 days from the expiry date specified in the invitation, appoint the members of the Board. 30
- (7) If the Minister receives no or insufficient nominations within the period specified in the invitation or the notice, the Minister may appoint any person who, in the opinion of the Minister, meets the criteria contemplated in subsection (3).
- (8) A nominated person— 35
- (a) must be a citizen of and normally resident in the Republic;
 - (b) may not be a political office bearer;
 - (c) may not be an unrehabilitated insolvent whose insolvency was caused by his or her negligence or incompetence;
 - (d) may not be a person who has been removed from an office of trust on account of misconduct; 40
 - (e) may not be person who has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty or of any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), the Companies Act, 1973 (Act No. 61 of 1973), or of contravening this Act. 45
- (9) Within 30 days after the appointment of the Board, the Minister must determine the time and place of its first meeting and the Board must determine the time and place of any future meeting.
- (10) The Minister must, as soon as practicable after the appointment of the members of the Board, by notice in the *Gazette*, publish— 50
- (a) the name of every person appointed as a member;
 - (b) the date from which the appointment takes effect; and
 - (c) the period for which the appointment is made.
- (11) The Minister must appoint persons, who in the opinion of the Minister have

experience and expertise in matters pertaining to the construction industry and its development objectives, to be—

- (a) the chairperson of the Board; and
- (b) the deputy chairperson of the Board.

Period and conditions of membership 5

7. (1) Board members hold office for a period not exceeding three years, on the conditions determined by the Minister.

(2) A Board member may not serve for more than two consecutive terms, unless the Minister considers it necessary to reappoint a member, to ensure continuity or on the grounds of the specific expertise of that member. 10

(3) A third of the Board members must be reappointed, but if it is not possible to do so, a number as near to a third of the members as possible may be so appointed.

(4) A member must immediately vacate office if he or she—

- (a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury or any offence involving dishonesty or of any offence in terms of the Corruption Act, 1992 (Act No. 94 of 1992), the Companies Act, 1973 (Act No. 61 of 1973), or of contravening this Act; 15
- (b) becomes a political office bearer;
- (c) becomes an insolvent as contemplated in section 6(8)(c);
- (d) has been removed from an office of trust on account of misconduct; 20
- (e) is relieved of his or her duties under subsection (5); or
- (f) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board.

(5) The Minister must, in writing, immediately relieve any member of his or her duties if that member has— 25

- (a) failed to vacate his or her office in terms of subsection (3) or (4);
- (b) failed to comply with section 6(8);
- (c) failed to attend two consecutive meetings of the Board without leave of the Board as noted in the minutes of those meetings, which leave may be granted retrospectively; or 30
- (d) failed to uphold and advance the objects of the Board.

(6) If a member dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister may appoint another person in accordance with section 6, to fill the vacancy for the remaining portion of the period for which that member was appointed. 35

Remuneration of members

8. A member of the Board or a committee of the Board receives such remuneration and allowances as determined by the Minister, in consultation with the Minister of Finance.

Disclosure of interest 40

9. If a member of the Board or his or her spouse, immediate family member, life partner or business associate, has any direct or indirect financial interest in any matter to be dealt with at any meeting of the Board, that member—

- (a) must disclose that interest and the extent thereof in writing to the chairperson, who must table that statement at the next meeting of the Board; 45
- (b) may not attend any portion of a meeting of the Board during the consideration of that matter by the Board;
- (c) may not in any manner take part as a member of the Board in the consideration of that matter by the Board; and
- (d) may not in any manner endeavour to influence the opinion or vote of any other member of the Board in connection with that matter. 50

Chief executive officer

10. (1) The Board, in consultation with the Minister, appoints the chief executive officer.

(2) The chief executive officer may be reappointed at the expiry of his or her term of office.

(3) The chief executive officer holds office for a period of five years, subject to such conditions as the Board determines, which include remuneration and allowances, determined by the Board in accordance with a system approved by the Minister, in consultation with the Minister of Finance. 5

(4) The chief executive officer must enter into a performance agreement with the Board on acceptance of the appointment.

(5) The chief executive officer—

(a) is responsible to the Board for the execution of his or her functions in terms of this Act; 10

(b) must manage and control the daily activities of the Board, in accordance with the business and financial plans of the Board.

Staff of Board

11. (1) The chief executive officer may, on such conditions as the Board determines, appoint such employees as are necessary to enable the Board to properly carry out its functions. 15

(2) The Board pays its employees out of its funds such remuneration, allowances, subsidies and other benefits as the Board determines in accordance with a system approved for that purpose by the Minister, with the concurrence of the Minister of Finance. 20

(3) An employee of the State may, subject to the Public Service Act, 1994 (Proclamation No. 103 of 1994), be seconded to the Board.

Meetings

12. (1) The Board must meet at least four times a year. 25

(2) The chairperson of the Board or, in his or her absence, the deputy chairperson, must give each member of the Board 14 days written notice of the time, date and place of the meeting and the matters to be discussed.

(3) The chairperson or, in his or her absence, the deputy chairperson presides at meetings of the Board. 30

(4) In the absence of both the chairperson and the deputy chairperson, a member of the Board, elected by the members present, presides at meetings of the Board.

(5) The chairperson or, in his or her absence, the deputy chairperson, may at any time call an additional meeting of the Board.

(6) The Board must keep a register of attendance and minutes of its meetings and must circulate copies thereof to the members of the Board within two weeks after the meeting to which it relates. 35

(7) The minutes, when confirmed at the next meeting and signed by the person who chairs that meeting, are a true and correct record of the proceedings.

(8) The quorum for a meeting of the Board is a majority of its members. 40

(9) A decision of the majority of the members of the Board present, at any meeting, constitutes a decision of the Board.

(10) In the event of an equal number of votes, the person presiding at the meeting has a casting vote in addition to that person's deliberative vote.

(11) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason only of a vacancy on the Board or because a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised in good faith by the requisite majority of the members of the Board who were present at the time and entitled to vote as members. 50

Stakeholder consultation

13. (1) The Board must constitute a construction industry stakeholders' forum to inform it on matters that affect the development of the construction industry.

(2) The stakeholders' forum comprises individuals who have experience, expertise or skills necessary to enable it to advise the Board appropriately and who represent stakeholders in the construction industry. 55

(3) In constituting the stakeholders' forum the Board must, once every two years,

invite nominations from organised labour, organised business and construction industry related bodies, clients, societies and associations in a manner the Board considers fit.

(4) The Board must establish a stakeholders' forum from the nominations submitted in terms of subsection (3), on the conditions it considers appropriate.

(5) The Board must convene, at least once per year, a meeting of the stakeholders' forum with the Minister to discuss matters raised by the stakeholders' forum or the Board and submitted to the Minister, in writing, two months prior to that meeting. 5

(6) The chairperson of the Board presides over the meetings of the stakeholders' forum, and section 12(3) applies to the meetings of the stakeholders' forum, with the changes required by the context. 10

(7) Subject to section 5(10)(b), the Board may establish a committee or a focus group to address issues of interest to specific sectors or stakeholders.

Evaluation and review

14. (1) The Board must facilitate a review of its activities in relation to its goals and objects, at least once every five years. 15

(2) A panel drawn from the public sector and the private sector and appointed by the Minister on the basis of expertise in relation to the functions of the Board, must undertake the evaluation.

(3) The panel must submit its report and recommendations to the Minister.

Delegation of power 20

15. (1) The Board may delegate any of its powers, in terms of this Act, to any person it considers fit.

(2) The Board is not divested of any power so delegated and may amend or withdraw any such delegation.

CHAPTER THREE 25

REGISTER OF CONTRACTORS

The purpose of this chapter is to establish a public sector register of contractors that will support risk management in the tendering process; reduce the administrative burden associated with the award of contracts; reduce tendering costs to both clients and contractors; enable effective access by the emerging sector to work and development opportunity; assess the performance of contractors in the execution of contracts and thus provide a performance record for contractors; regulate the behaviour and promote minimum standards and best practice of contractors; store and provide data on the size and distribution of contractors operating within the industry and the volume, nature, performance and development of contractors and target groups; and to enable access by the private sector and thus also facilitate private sector procurement. 30
35

Registration of contractors

16. (1) The Board must, within the first three years of its establishment, establish a national register of contractors, which categorises contractors in a manner that facilitates public sector procurement and promotes contractor development. 40

(2) The register of contractors must—

- (a) indicate the size and distribution of contractors operating within the construction industry;
- (b) indicate the volume, nature and performance of contractors and target groups; 45
and
- (c) enable access by the private sector and thus facilitate private sector procurement.

(3) The Minister must prescribe the manner in which public sector construction contracts may be invited, awarded and managed within the framework of the register and within the framework of the policy on procurement.

(4) From a date determined by the Minister, by notice in the *Gazette*, every organ of state must, subject to the policy on procurement, apply the register of contractors to its procurement process. 5

(5) The Minister must prescribe the requirements for registration, taking into account the different stages of development of contractors in the construction industry, the development of the emerging sector and the objectives of this Act.

(6) A contractor may, in writing, apply to the Board for registration and the application must be accompanied by the prescribed particulars and prescribed administration fees, which are not refundable. 10

(7) If the Board is satisfied that the applicant is entitled to registration, it must cause the necessary entry to be made in the register and the chief executive officer must issue to the applicant a registration certificate in the prescribed form. 15

(8) The Minister may, on the recommendation of the Board, prescribe a fee to be paid annually to the Board by all contractors registered with the Board in terms of subsection (7).

Keeping of register

17. (1) The Board shall keep and maintain a register of the prescribed particulars of contractors who are registered with the Board and a registered contractor must, in writing, notify the Board of substantive changes of those particulars within 30 days after such a change. 20

(2) A contractor may apply to the Board to amend its category status.

Unregistered contractors

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18. (1) A contractor may not undertake, carry out or complete any construction works or portion thereof for public sector contracts, awarded in terms of competitive tender or quotation, unless he or she is registered with the Board and holds a valid registration certificate issued by the Board.

(2) Any contractor who carries out or attempts to carry out any construction works or portion thereof under a public sector contract and who is not a registered contractor of the Board in terms of this Act, is guilty of an offence and liable, on conviction, to a fine equal to ten percent of the value of the contract so carried out. 30

(3) A contractor referred to in subsection (2) must, upon receipt of a written notice by the Board served on him or her in the prescribed manner, cease to continue any public sector construction work. 35

(4) A contractor who receives a notice referred to in subsection (3), during the currency of a contract, may be permitted to complete the construction works or portion thereof, as determined by the Board.

Removal of names from and restoration thereof to register

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19. (1) The Board may order the chief executive officer to remove the name of any contractor from the register, if the Board is satisfied that such contractor has breached the requirements and conditions for registration.

(2) Any registration which is proved to the satisfaction of the Board to have been made in error or as a result of misrepresentation or in circumstances not authorised by this Act, must be removed from the register, and the reason for that removal must be made in the register. 45

(3) A contractor whose name is removed from the register in terms of subsection (1) or (2) must be notified thereof by the chief executive officer by prepaid registered post sent to the address appearing in the register. 50

(4) The effective date of cancellation of a registration certificate is the date on which notice is given in terms of subsection (3).

(5) As from the date on which notice is given in subsection (3)—

- (a) any registration, in terms of this Act, of the contractor concerned is cancelled; and 55

(b) that contractor may not perform any act which he or she was entitled to perform as a registered contractor.

(6) A contractor whose name and particulars have been removed from the register in terms of this section, may be restored to the register, if that contractor complies with such requirements as the Board may determine. 5

(7) A contractor whose name and particulars are removed from the register in terms of this section, during the currency of a public sector contract, may be permitted to complete the construction works or portion thereof, as determined by the Board.

Duration and renewal of registration

20. (1) Registration by the Board in terms of this Act is valid for a period of three years. 10

(2) A registered contractor must apply for renewal of registration three months before the existing registration expires and must pay the prescribed renewal fee.

(3) The Board is under no obligation to approve an application for renewal by reason of the fact that the contractor is at that stage registered with the Board in terms of this Act. 15

Best practice contractor recognition scheme

21. The Board must, within a reasonable period after the establishment of the register of contractors, establish a best practice contractor recognition scheme which—

- (a) enables organs of state to manage risk on complex contracting strategies; and 20
- (b) promotes contractor development in relation to best practice standards and guidelines developed by the Board in terms of section 5(2).

CHAPTER FOUR

REGISTER OF PROJECTS

The purpose of this chapter is to establish a register that gathers information on the nature, value and distribution of projects and provides the basis for a best practice project assessment scheme to promote the performance of public and private sector clients in the development of the construction industry. 25

Register of projects

22. (1) The Board must, within the first three years of its establishment, establish a register of projects to gather information on the nature, value and distribution of projects and provide the basis for the best practice project assessment scheme contemplated in section 23. 30

(2) The Minister must prescribe the requirements for the registration of projects, taking into account the different size and characteristics of projects in the construction industry and the objectives of this Act. 35

(3) All construction contracts above the prescribed tender value must be recorded in the register.

(4) The Minister may, on the recommendation of the Board, prescribe a fee to be paid to the Board by all clients for registration of projects. 40

Best practice project assessment scheme

23. (1) The Board must, within a reasonable period after the establishment of the register of projects, establish a best practice project assessment scheme, based on the best practices identified by the Board in terms of section 5.

(2) After a date determined by the Minister in the *Gazette* all construction contracts above a prescribed tender value are subject to an assessment, in the prescribed manner, 45

of compliance with best practice standards and guidelines published by the Board in the *Gazette*, and different dates may be determined for different practices.

(3) Every client who engages in the best practice project assessment scheme must pay to the Board a prescribed percentage of the contract sum.

CHAPTER FIVE

5

FINANCIAL MANAGEMENT

The purpose of this chapter is to regulate the financial management of the Board, subject to the Public Finance Management Act, 1999.

Funding of Board

- 24.** (1) The funds of the Board consist of— 10
- (a) money appropriated by Parliament, for the achievement of the objects of the Board;
 - (b) income derived by virtue of the exercise and performance of its powers, functions and duties;
 - (c) donations or contributions received by the Board from any source with the approval of the Minister; 15
 - (d) any other income, including interest earned on any investment made in terms of this section.
- (2) The Board must—
- (a) use its funds to defray expenses incurred by it in the exercise of its powers and the performance of its functions and duties; 20
 - (b) use donations or contributions contemplated in subsection (1)(c) for such purposes and in accordance with such conditions, if any, as are specified by the donor or contributor concerned, with the approval of the Minister.
- (3) Subject to section 7 of the Public Finance Management Act, 1999 (Act No.1 of 1999), the chief executive officer must open an account in the name of the Board with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990). 25
- (4) The Board may invest any unspent part of the Board's funds and use interest accrued on such investments to defray expenses in connection with the exercise of its powers and the performance of its functions and duties. 30
- (5) The Board may, with the approval of the Minister and the Minister of Finance, authorise the establishment of such reserve funds and deposit such amounts therein as the Board deems necessary and desirable.
- (6) The Board must in each financial year, at such time as determined by the Minister, submit a statement of the Board's estimated income and expenditure for the following year to the Minister and the Minister of Finance for their approval. 35
- (7) The Board must comply with the applicable provisions of the Public Finance Management Act, 1999.

Loans

- 25.** The Board may, with the approval of the Minister, in consultation with the Minister of Finance, raise money by way of a loan, or otherwise obtain money at such rate of interest and on such conditions as the Board considers fit. 40

Accounting

- 26.** Subject to the Public Finance Management Act, 1999, the Board is the accounting authority. 45

Financial year of Board

27. The Board's financial year is from 1 April in any year to 31 March in the following year, but the first financial year is from the date of the coming into operation of this Act to 31 March of the following year.

CHAPTER SIX

5

GENERAL

The purpose of this chapter is to provide for legal procedures and general matters.

Restriction on use of name

28. No person may under a name containing the words "Construction Industry Development Board" or the translation thereof in any other official language— 10

- (a) conduct his or her or its affairs or business or his, her or its occupation or trade;
- (b) falsely claim to be acting on behalf of the Board.

Enforcement

29. (1) The Board may, for the purposes of enforcing the code of conduct referred to in section 5, convene an inquiry into any breach of the code of conduct and must conduct the inquiry in the prescribed manner. 15

(2) The Board may—

- (a) subpoena any person to appear in person at an inquiry;
- (b) subpoena any person to produce any documentation relevant to such an inquiry; and 20
- (c) seize and make copies of the documentation produced in terms of paragraph (b).

Secrecy

30. (1) The chief executive officer, staff and all members of the Board may not disclose to any source, outside of the Board, information that may be considered confidential. 25

(2) Any person who breaches subsection (1) is subject to disciplinary action conducted in the prescribed manner.

Personal liability

31. A person is not liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty in terms of or by virtue of this Act or in respect of anything that may result therefrom. 30

Consultation

32. (1) The Minister must ensure appropriate consultation with other affected Ministers with regard to the objects, powers, functions and duties of the Board. 35

(2) The consultation referred to in subsection (1) must include, but is not limited to—

- (a) the development and implementation of policy with regard to the construction industry;
- (b) the determination of best practice priorities for the construction industry;
- (c) the Board's business plan; and 40
- (d) issues raised by construction industry stakeholders.

Regulations

33. (1) The Minister may, by notice in the *Gazette*, make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in

terms of this Act and any other matter for the better execution of this Act or in relation to any power granted or function or duty imposed by this Act.

(2) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice, of not less than 30 days from the date of publication of the notice. 5

(3) If the Minister alters the draft regulations, as a result of any comment, he or she need not publish those alterations before making the regulations.

(4) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (2). 10

Short title and commencement

34. This Act is called the Construction Industry Development Board Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTRUCTION
INDUSTRY DEVELOPMENT BOARD BILL, 2000**

1. The Bill seeks to establish a statutory authority to be the specialist agency to co-ordinate the national endeavour to transform and develop the industry through promoting growth, improved performance, delivery, value for money and the enhanced contribution of the industry to South Africa's social and economic development agenda.

2. To discharge the abovementioned responsibility, the Construction Industry Development Board is established as a juristic person (clause 2 of the Bill) and given powers, functions and duties in line with its objects (clause 4):

- the promotion of appropriate research;
- the implementation of Government policy with regard to the construction industry;
- providing advice to the Minister;
- general functions, such as the provision of consultancy services in relation to the functions of the Board or general powers, such as the establishment of committees, to assist it in the performance of its functions.

3. Clause 6 of the Bill provides for the composition of the Board, which must consist of at least nine, but not more than thirteen members, appointed by the Minister. A member of the Board may not be a political office bearer and must be a South African citizen. Furthermore, a balance must be achieved in the appointment of the members of the Board with regard to the fields of expertise required and it should reflect the race, gender and geographical composition of the country. This clause further prescribes nomination procedures and other disqualifications from membership, such as insolvency or removal from an office of trust on account of misconduct.

4. Clause 7 regulates the term of office of members and conditions under which a member must vacate office.

5. Clause 8 provides that the Minister of Public Works, in consultation with the Minister of Finance, must approve the remuneration and allowances paid to the members of the Board or a committee of the Board.

6. Clause 9 provides for the disclosure of any financial interest by a member in a matter to be dealt with by the Board.

7. Clause 10 provides for the appointment of a chief executive officer and the functions and conditions of his or her appointment.

8. Clause 11 provides for the appointment of staff of the Board and the conditions of their service.

9. Clause 12 provides for meeting procedures to be followed by the Board.

10. Clause 13 determines that the Board must establish a Construction Industry Stakeholders' Forum to inform the Board on matters that affect the development of the construction industry. It further provides for meeting procedures of the forum.

11. Clause 14 determines that the Board must facilitate a review of its activities in relation to its objects at least every five years by an independent panel drawn from the public sector and from the private sector. The panel must prepare a report in this regard and submit it to the Minister.

12. Clause 15 provides for the delegation of powers by the Board.

13. Clauses 16 to 21 provide for the establishment of the register of contractors, which is pivotal to the development of the construction industry and must indicate the size and distribution of contractors operating in the construction industry and the volume, nature and performance of contractors and target groups and enable access by the private sector. Matters such as the registration and deregistration of a contractor are dealt with, as well as the duration and renewal of registration.

14. Clause 21 determines that the Board must, within a reasonable period of time, establish a Best Practice Contractor Recognition Scheme to enable organs of State to

manage risk on complex contracting strategies and to promote best practice contractor performance and contractor development.

15. Clauses 22 and 23 provide for the establishment of the register of projects that will gather information on the nature, value and distribution of public and private sector projects. Within a reasonable time, the Board must introduce a Best Practice Project Assessment Scheme that is linked to the Register of Projects and will promote best practice client performance within the public and private sectors.

16. Clauses 24 to 27 provide for the financial management of the Board. These clauses regulate, *inter alia*, the funding of the Board and stipulate that the financial management of the Board must comply with the Public Finance Management Act, 1999.

17. Clauses 28 to 32 regulate general matters such as the restriction on the use of the name of the Board, enforcement of the code of conduct, secrecy, liability, appropriate consultation and the power to make regulations.

18. Clause 34 provides for the short title of the Act and that the date of coming into effect must be determined by the President.

FINANCIAL IMPLICATION FOR THE STATE

It is foreseen that the CIDB will rely initially on Government funding. Once the register of contractors and the register of projects are established, the envisaged cost will be partially funded from the operation of these services to industry stakeholders. The total annual budget for the CIDB is estimated at approximately R11,5 million. The CIDB will be funded by the Department of Public Works from within the MTEF budget allocation.

OTHER DEPARTMENTS/BODIES CONSULTED

The Departments of Transport, Water Affairs & Forestry, Housing, Provincial and Local Government, Finance and State Expenditure have been consulted. Through the structured process of consultation established by the Inter-ministerial Task Team on Construction Industry Development all construction industry stakeholders have contributed to the conceptualisation of the CIDB. Prior to publication in the Government Gazette (10 December 1999), a two-day Construction Industry Summit Workshop debated the draft legislation with Stakeholders. The stakeholders consulted through this workshop and other processes include:

Local Government and Provincial Departments

- Greater Durban Metropolitan Council
- Pretoria Metropolitan Council
- Transport, Free State
- Local Government & Housing, Eastern Cape
- Public Works, Eastern Cape
- Public Works, Kwazulu-Natal
- Public Works, Northern Province
- Public Works & Transport, North West
- Public Works, Western Cape
- Public Works, Mpumalanga
- Public Works, Northern Cape

Industry Bodies

- South African Federation of Civil Engineering Contractors

South African Association of Consulting Engineers
South African Institute of Civil Engineers
Building Industry Federation of South Africa
South African Institute of Architects
South African Black Technical and Allied Careers Organisation
Black Construction Council
Construction and Allied Workers Union
Building Construction and Allied Workers Union
National Home Builders' Registration Council.

IMPLICATIONS FOR PROVINCES

Provinces will be involved in adhering to best practices, programmes and projects initiated by the Construction Industry Development, including the programmes such as the Register of Contractors and the Register of Projects.

PARLIAMENTARY PROCEDURE

The Department of Public Works and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the Parliamentary procedure established by section 76 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).