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22 February 2017

CONSTRUCTION SECTOR GAZETTE PROCESS UPDATE

HOW FAR ARE WE WITH THE GAZETTE PROCESS

The Draft Construction Sector Code was gazetted and published for public comments for a period of 60 days on the 28th October 2016, which period ended on the 27 December 2016 for submission of comments. A Technical Review Committee (TRC) of the CSCC has been set up to consider and process all the comments and inputs that were received. The process of considering these comments is currently ongoing with necessary changes effected on the draft document.

It is therefore envisaged that this process, including the confirmation of all proposed changes and corrections should be completed before the end of March 2017.

HOW MANY COMMENTS AND INPUTS WERE RECEIVED

Following the gazette for public comments, a total of 35 comments (including recommendations and suggestions), with a few focusing on substantial and comprehensive submissions on virtually every element of the scorecard were received. Most of these comments relate to calculation formulas, technical queries on the weighting points, corrections and minor additions on the text, with a few submission contesting the newly defined scope of application of the sector, in particular those Measured Entities who are expected to comply with other regulatory licensing requirements such as the mining and transport sector.

As a result, the construction sector scope of application will be amended to exempt those Measured Entities (companies) whose nature of business requires compliance with other regulatory licensing departments. For the purpose of measurement, the onus of proving such requirements will be on the Measured Entities seeking such exemptions.

WHERE TO WITH THE GAZETTE PROCESS NOW

As per standard operational procedure involved in the gazette of sector codes, the CSCC Technical Review Committee (TRC) has already met with the technical team of the Department of Trade and Industry (The DTI) on the 3rd of February 2017 to review, consider and process all inputs and respond to those that requires such responses and clarifications.

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A follow-up meeting will be held in the first week of March 2017 to finalize all outstanding areas related to the process and agree, amongst other things, the envisaged date of application of the sector code and the requirements of an affidavit for measurement of EMEs and QSEs.

Once all these have been discussed and processed, a final recommendation will be made to the Minister to have the Final Gazette of the Construction Sector Code approved for gazette and publishing.

FURTHER CONSULTATIONS

The CSCC has also extended an opportunity to submit and comment, to specialist stakeholders such as the Construction SETA, who oversee the Skills Development area of work for their specific inputs and recommendations where necessary. The opportunity was also extended to Skills Training practitioners within the sector.

The CEO has engaged with and presented at the South African National Accreditation Systems (SANAS) Technical Assessor Conclave which was attended by consultants and officials that assess the technical competencies of all Verification Agencies that are accredited by SANAS to conduct BBBEE verification.

Already, the CSCC CEO has presented in at least three (3) consultative sessions convened by the Gauteng Department of Economic Development focusing on their construction suppliers and contractors. A similar forum of supply chain and procurement managers is scheduled for the 17th March 2017.

PUBLIC SECTOR PROCUREMENT DEVELOPMENTS

As was also confirmed by the Finance Minister when delivering the 2017 Budget speech in parliament, the National Treasury has published and gazetted the revised PPPFA regulations which will be effective from the 01 April 2017. The revised regulations make provisions for two important requirements to which the revised construction sector code is significantly aligned, namely :

- **Section 6 (5)** which states that a “tenderer may not be awarded points for BBBEE status level of contributor if the tender document indicates that the tenderer intends sub-contracting more than 25 % of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended sub-contractor is an EME that has the capabilities to execute the sub-contract” ,
- **Rule 9 (1) & (2)** which states that if an organ of state intends sub-contracting a contract above the value of R 30 million, then the organ of state must not only subcontract to advance

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designated groups, but must advertise the tender with a specific condition that the successful tenderer must sub-contract a minimum of 30% of the value of the contract to ;

- *An EME or QSE with at least 51% black ownership,*
- *An EME or QSE with at least 51% black youth ownership,*
- *An EME or QSE with at least 51% black women ownership,*
- *An EME or QSE with at least 51% ownership of black people with disability*
- *An EME or QSE with at least 51% ownership of black people living in rural areas, a co-operative owned by black people or black people who are military veterans.”*

The revised construction sector code will be aligned with these principles and imperatives.

WHAT ABOUT THE TRANSITIONAL PERIOD FOR THE SECTOR CODE

Following some requests from a number of consultants and BBBEE practitioners that a transitional period be allowed for the implementation of the codes, as was previously reported, there will be NO transitional period provided for in the implementation of the new construction sector code.

The reasons for the transitional period not being allowed is, amongst other things, the following ;

- Throughout the negotiation and alignment of the construction sector code, the industry as a whole was expected to know that there will soon be a new construction sector code,
- Their clients (or most of their clients) are also members of the voluntary associations that made up the charter negotiation process and therefore, would have been the ones who mandated the representatives to negotiate a new sector code,
- Once published for public comments for 60 days, members of the industry would have had an opportunity to know how the new construction sector code will look like, as such preparing their systems and spend along those lines.
- In particular, since many Construction Sector Measured entities are currently measured in terms of the Generic BBBEE Codes of Good Practice, these will, once the final gazette has been signed, be allowed, should they wish to do so, to switch and be measured in terms of the finalized sector code.

Issued on behalf of the CSCC by the CEO

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