



DEVELOPMENT THROUGH PARTNERSHIP

30% Contractor Development; Competing Objectives

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Overview

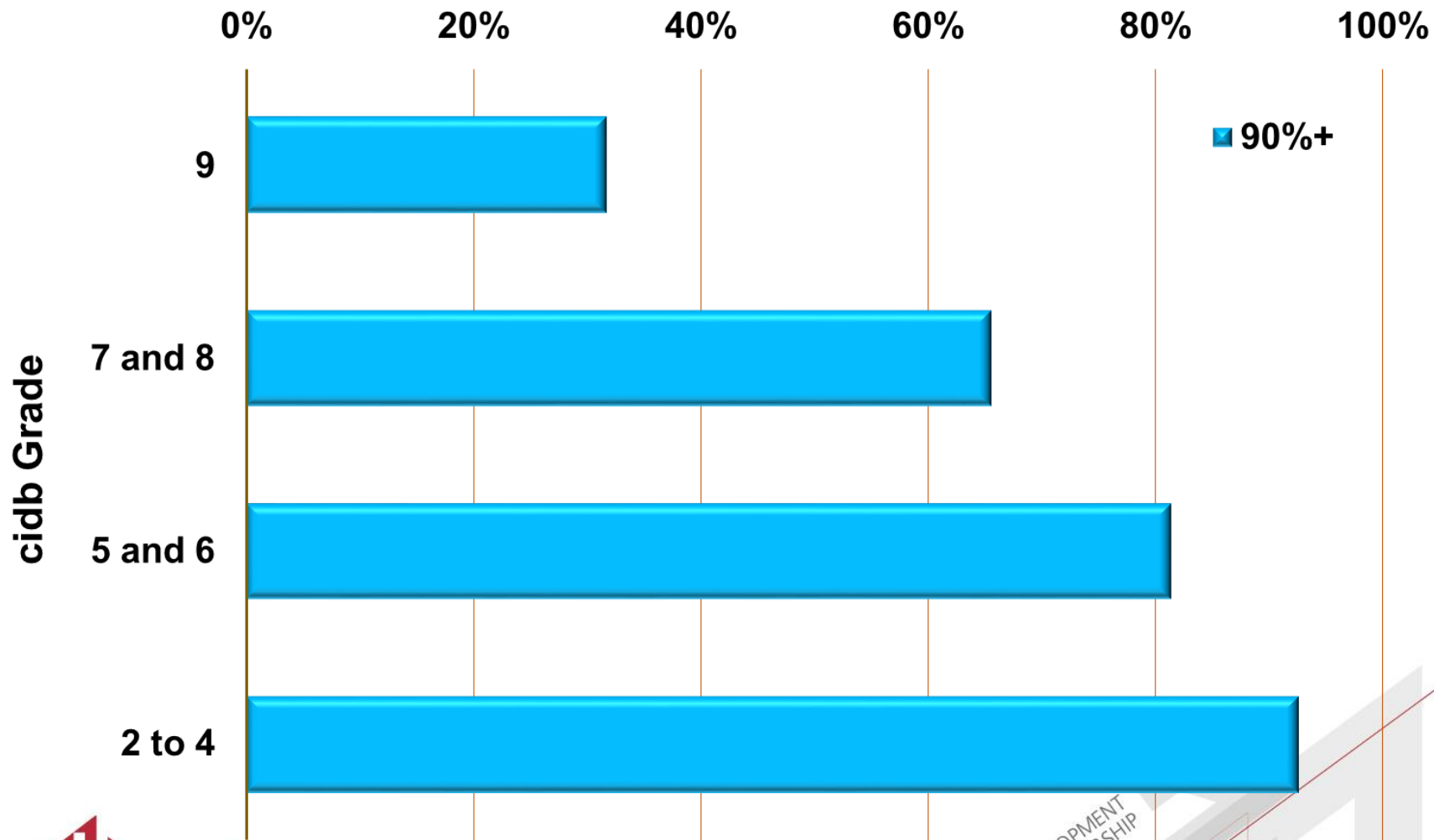
- **State of Transformation**
- **Community Expectations**
- **Business Forums**
- **The cidb Standard for Contract Participation Goals**
- **The PP Regulations; 30%**
- **Concluding Comments**



DEVELOPMENT THROUGH PARTNERSHIP

State of Transformation; Contractors

Black-Owned Contracting Entities; 90% +



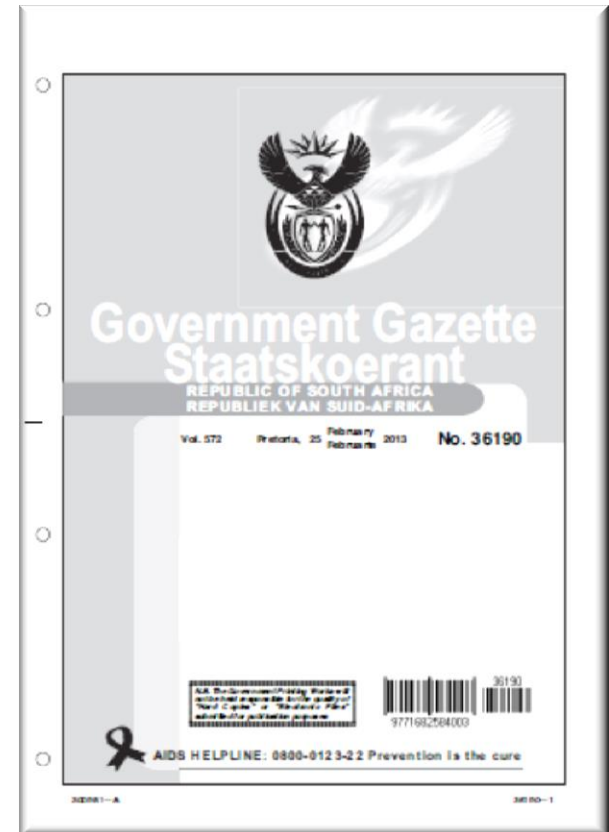
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Target Groups; Designated Groups

- **EME, QSE**
- **Black-, women- youth-owned**
- **disabilities**
- **rural or underdeveloped areas or townships**
- **military veterans**

cidb Standard for Indirect Targeting for Enterprise Development

- minimum contract participation goal (CPG) of 5% of the total project value on selected contracts to be undertaken by joint-venture partners or to be sub-contracted to developing contractors that are also to be beneficiaries of enterprise development support from the main contractor
- Gazette 36190 of 25 February 2013
 - Available www.cidb.org.za





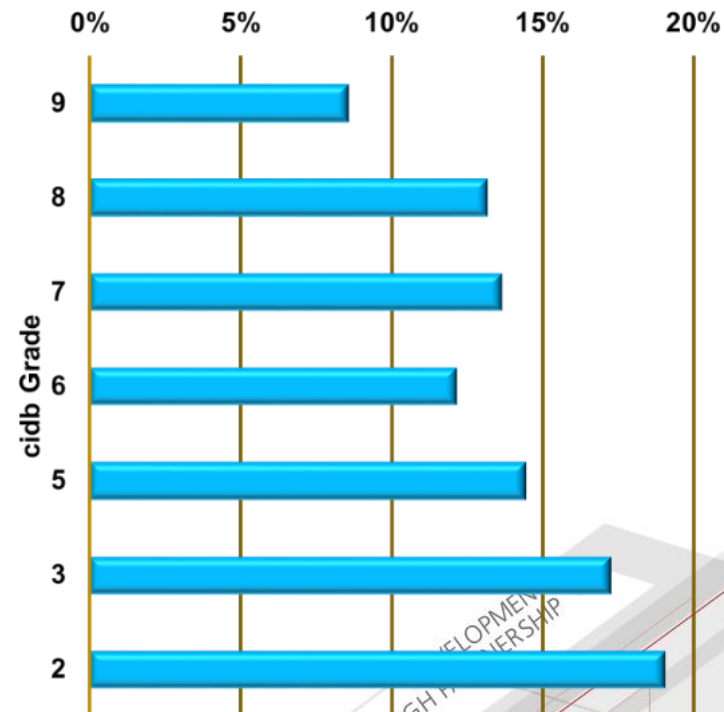
Community Expectations

Community Expectations

- **Legitimate expectation to derive opportunities from construction works within community:**
 - how much employment?
 - which skills levels?
 - which enterprises?
 - developmental requirements?
 - what cost?
- **Politicalised:**
 - role of Ward Councillors
 - “not in my Ward”

Impact of Contract Participation Goals (CPGs)

Over 50% of respondents had reflected that they were required to implement CPGs on their contracts – **at an average increase of around 14%** in the project cost



Liviero Construction (9 July 2018)

Liviero Group of Companies; Business Rescue:

- **Liviero Mining:**
 - **Continuous labour unrest and unrealistic demands leading to constant work stoppages unless their demands are met**
 - **Ongoing intimidation of reliable labour by the community**
 - **Malicious damage and destruction of our plant and equipment**
 - **Has cost the company in excess of R50m in this financial year alone**



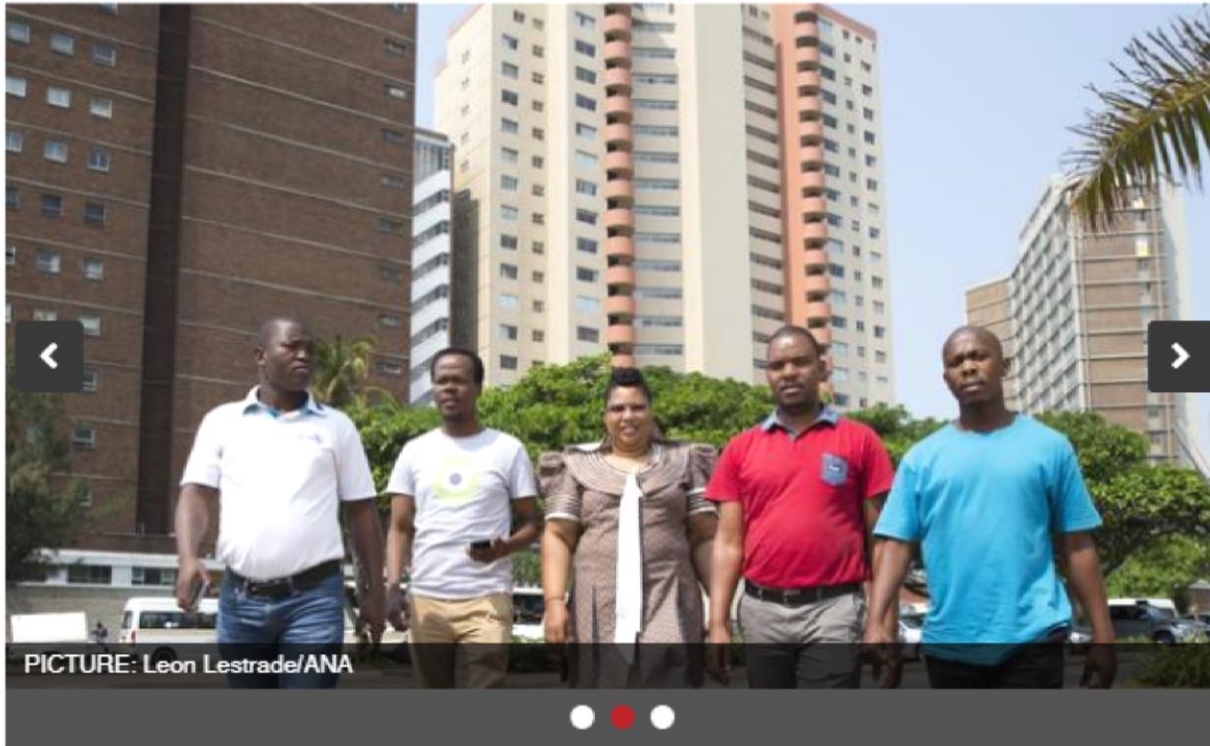
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Flagship Project Delayed

- **SANRAL announced today that construction of a national flagship project, the Mtentu bridge of the N2 Wild Coast road project, had to be stopped due to violence.**
- **Workers and management were threatened with assault rifles, among others. The action by scores of protestors was disruptive, threatening and intimidating.**
- **"At the heart of the dispute is simply that, while locals have been employed, those that weren't felt they should have been. There are only so many jobs per contract, which unfortunately means that not every unemployed person can be accommodated. SANRAL cannot condone hooliganism and aggression as a means of demanding who must be given jobs."**

'It is not fair to call us a mafia'

NEWS / 1 OCTOBER 2017, 11:15AM / NOKUTHULA NTULI



PICTURE: Leon Lestrade/ANA

Business Forums

R3.50



Radical Economic Theft

Ramaphosa slams radical economic 'thieves'

NEWS / 16 SEPTEMBER 2018, 2:30PM / SIBONISO MNGADI



President Cyril Ramaphosa

The Actions of Intimidation by Business Forums is Illegal

- **Police case number:**
 - inform the cidb
- **Court interdict:**
 - over 30 to date

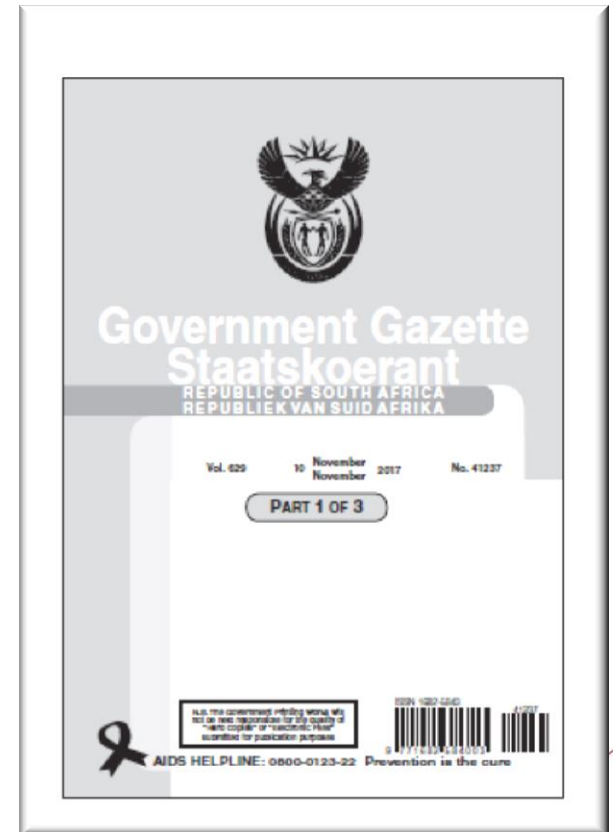


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cidb Standard for Contract Participation Goals

cidb Standard for Contract Participation Goals

- Gazette 41237 of 10 November 2017
 - Available www.cidb.org.za/
- Assessment of compliance is likely to be mandated through CID Regulation Amendments; 2018/19



Objectives

- **The aim of this best practice Standard is to:**
 - **promote uniformity and standardisation in contract participation goals (CPGs)**
 - **provide for conflict resolution mechanisms****in respect of contract participation goals relating to a contract for the provision of construction works**
- **Private and public sector employees are encouraged to adopt this Standard**
- **It is encouraged that this Standard is adopted in the homebuilding sector**

Some Thoughts on CPG's and Target Areas (Enterprises)

Geographic Area	CPG (% Contract value)	
	New Works	Maintenance
One or more Provinces	40%	80%
One or more Metropolitan or District Municipalities	20%	40%
One or more Local Municipalities	10%	20%

cidb Standard for CPGs

- **General:**
 - targeted area
 - enterprise categories
 - skills categories
 - designated groups
 - principles
- **Training and Development**
- **Community Engagement and Dispute Resolution**
- **Community Liaison Officers**
- **Selection and Recruitment of Targeted Labour**

Key Principles

- The employer shall only specify contract participation goals where a **feasibility study** has been undertaken at a programme level or at a project level to verify that the contract participation goal can realistically be achieved within the targeted area:
 - such feasibility study shall be included in the contract data
- Targeting of labour by **skills categories** is only permissible within categories of semi-skilled and unskilled labour
- **Employer engagement** with the Community Project Committee shall seek to obtain agreement with the community on the targeting strategy, contract participation goals to be employed on the construction works and dispute resolution mechanisms:
 - the agreement reached by the employer with the Community Project Committee shall be included in the contract data

Dispute Resolution

- The resolution of the disputes by community participants shall be firstly sought through **mediation** by a member of the Community Project Committee
- Where resolution of the dispute is not achieved through the Community Project Committee, resolution of the disputes by community participants shall then be sought through **mediation** by an appointed representative of the employer
- The outcome of such mediation shall be binding on the employer and the affected community, represented by the Community Project Committee
 - must be stated in community agreement & tender data

No Guarantee of Success





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Preferential Procurement Regulations (2017)

Preferential Procurement Regulations (2017)

**Addresses historic imbalances (including transformation)
not
community participation**

PP Regulations; Pre-Qualification (i)

4(1) If an organ of state decides to apply pre-qualifying criteria to advance certain **designated groups**, that organ of state must advertise the tender with a specific tendering condition that only one or more of the following tenderers may respond-

- (a) a tenderer having a stipulated minimum B-BBEE status level of contributor;
 - (b) an EME or QSE;
 - (c) a tenderer **subcontracting** a minimum of 30% to:
 - designated groups
-
- **Implementation Guide: Tenderers must, where subcontracting is a prequalification requirement, submit proof of subcontracting arrangement** between the main tenderer and the subcontractor:
 - why?

PP Regulations; Pre-Qualification (ii)

- **Is this a CPG:**
 - yes
 - only targets enterprises – not labour
 - BUT does not target a local community
- **Feasibility study:**
 - **Implementation Guide:** Institutions must conduct market research or industry analysis to identify procurement opportunities, level of transformation in a particular sector or commodity, supply market, their B-BBEE status level and availability of EMEs or QSEs who may be eligible to tender.
- **Cannot target local participation:**
 - 4(1) does not specify target area
 - hence no targeting of local (other than SA)
 - excludes targeting community enterprises under the 30%

PP Regulations; Subcontracting as Condition of Tender (i)

9.(1) If **feasible** to subcontract for a contract above **R30 million**, an organ of state must apply subcontracting to advance **designated groups**

– **Implementation Guide:**

- The term “feasible” is used in recognition of the fact that it may not always be possible to subcontract in all tenders due to the nature of some tenders
- Institutions must therefore identify procurement opportunities for designated groups
- The responsibility to determine whether it is feasible or not rests with the institution preparing the tender
- Institutions must conduct market or industry research to identify level of transformation in the sector or commodity, role players and their B-BBEE status level and availability of EMEs or QSEs who may be eligible for subcontracting

PP Regulations; Subcontracting as Condition of Tender (ii)

(2) If an organ of state applies subcontracting, the organ of state must advertise the tender with a specific tendering condition that the successful tenderer must **subcontract** a minimum of 30% of the value of the contract to:

- **designated groups**
- **Implementation Guide: Tenderers must, where subcontracting is a prequalification requirement, submit proof of subcontracting arrangement between the main tenderer and the subcontractor:**
 - why?
- **Is this a CPG:**
 - yes
- **Can 30% be allocated to one enterprise:**
 - yes

PP Regulations; Subcontracting as Condition of Tender (iii)

(3) The organ of state must make available the list of all suppliers registered on a database approved by the National Treasury in respect of the applicable designated groups from which the tenderer must select a supplier

- **target area** is not defined
- can organ of state target through the database established?
 - was not the intention
 - but then excludes targeting community enterprises under the 30%



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Concluding Comments

Is there a conflict Between PP Regulations and Community Expectations?

- **Community Participation:**
 - must be feasible
 - enterprise and labour
 - usually one or more Wards
 - proof of subcontracting arrangement not required
 - target group: local
- **PP Regulations / Historic Imbalances:**
 - must be feasible
 - enterprise only
 - all SA
 - proof of subcontracting arrangement required
 - target group: transformation

Comment

- **Enterprise Development:**
 - **contracts over R30m:**
 - 30% for subcontractors:
 - target SA for primary subcontractors
 - if feasible, possibly allow an additional 5% or so for local community
 - incorporate cidb Standard for Indirect Targeting
 - **contracts less than R30m:**
 - assess what is feasible:
 - SA or local
 - 30% or less
- **Labour:**
 - target unskilled and semiskilled for local community



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Thank You