



# **FINAL AMENDED POLICY ON CONTRACTOR DEVELOPMENT PROGRAMME FOR EMAKHAZENI MUNICIPALITY**

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## **EMERGING CONTRACTOR DEVELOPMENT PROGRAMME**

### **1. INTRODUCTION**

One of the goals of the Reconstruction and Development Programme (RDP) White Paper is that small businesses, particularly those owned and operated by black entrepreneurs, must form an integral part of the national economy and economic policy. However, there are still a number of constraints that small, medium and micro enterprises are still faced with such as:

- ✓ Access to finance
- ✓ Slow pace on the uptake into the supply chain management policy
- ✓ Management skills
- ✓ Lack of proper monitoring and evaluation systems
- ✓ Delayed payment to emerging contractors
- ✓ The fact that the Contractor Development Programme is not mandatory
- ✓ Management skills, and
- ✓ Supportive institutional arrangements

Emerging Contractor Development Programme, if well implemented, will become the flagship development initiative in the municipality to ensure that transformation in the industry, increased capacity of the SMME's and economic transformation. The municipality decided to introduce this policy, which is informed by the Guidelines for Implementing Contractor Development Programmes by CIDB, in order to increase capacity, equity ownership, promote social and economic development. It is key to note that the development of an entrepreneur as a contractor able to operate independently in the engineering construction field cannot be achieved in an ad hoc basis, or over a short period

In line with the guidelines for implementing Contractor Development Programme, the policy also seeks to:

- ✓ Improve the grading status of contractors in targeted categories and grades
- ✓ Increase the number of black women, disabled, and youth-owned companies in targeted categories
- ✓ Create sustainable contracting enterprises by enabling continuous work through a competitive process
- ✓ Improve the performance of contractors in terms of quality, employment practices, skills development, safety, health and the environment; and
- ✓ Improve the business management and technical skills of these contractors

The aforementioned constraints also apply to the construction industry, in which the Council acting as Employer to contractors, annually invests millions of rands in engineering infrastructure such as roads and storm-water drainage, etc. To achieve the RDP principles in the construction and building industries, an environment conducive to emerging contractor development has to be created by eliminating or reducing the constraints and restrictive practices, which presently exist. It should be borne in mind that the constraints in the construction industry developed and evolved over many years as a result of construction problems and other contractual shortcomings experienced on contracts.

## **2. REGULATORY FRAMEWORK**

- Constitution of Republic of South Africa Act, 1996;
- Construction Industry Development Board Act, No. 38 of 2000;
- Broad Based Black Economic Empowerment Act, No. 53 of 2003;
- Preferential Procurement Policy Framework Act, No. 5 of 2000;
- Emakhazeni Municipality Supply Chain Management Policy

### **2.1 Constitution of the Republic of South Africa, 1996 (the Constitution)**

Section 217 of the constitution defines how procurement matters should be handled. It further provides for the advancement and protection of the Previously Disadvantaged Individuals (PDIIs)

### **2.2 Construction Industry Development Board Act, No.38 of 2000**

The Construction Industry Development Board (CIDB) is mandated to provide strategic leadership to stakeholders and stimulate sustainable reform and improvement of the construction sector for effective delivery and the industry's enhanced role in the country's economy. The CIDB currently keeps and maintains the construction registers of contractors and projects. They play a major role in ensuring that client departments adopt best practices which can be auditable even within the emerging contractor environment. The CIDB is also responsible for the issuing of procurement notes which deals with construction industry projects that are expected to adhere to, in order to ensure standardized procurement across the board

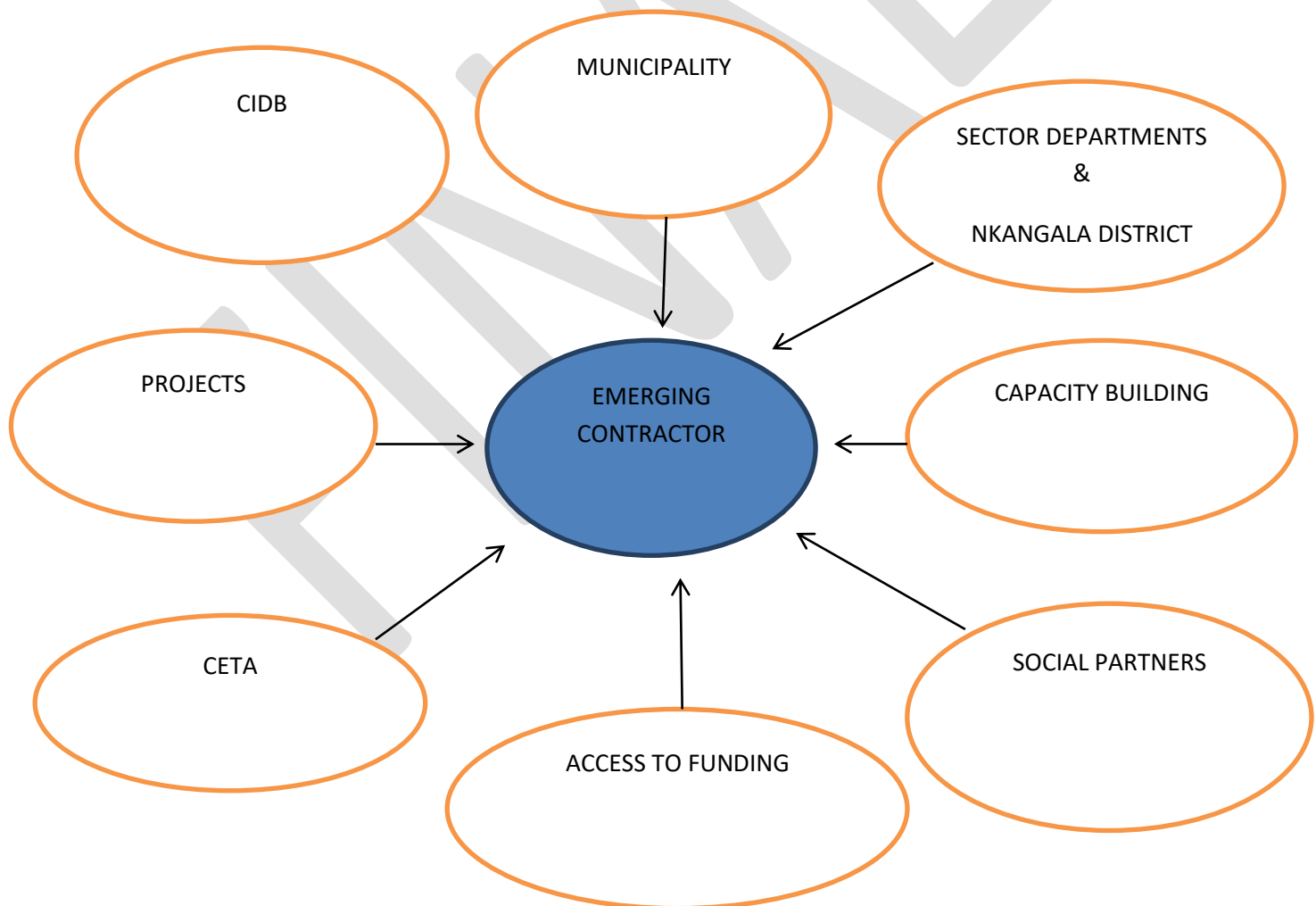
### **2.3 Broad-Based Black Economic Empowerment Act, No 53 of 2003 (BBBEE)**

BBBEE provides a legal framework for the promotion of Broad Based Black Economic Empowerment. The Act provides for the Gazetting of transformation characters and the issuing of generic and sector Codes of Good Practice which are a vehicle for the advancement of Black Economic Empowerment.

## 2.4 The Preferential Procurement Policy Framework Act, No 5 of 2000 (PPPFA)

The PPPFA is a legal framework for public sector procurement developed in terms of section 217 of the Constitution. Treasury regulations and practice notes have been developed as tools for the implementation of the act within the three spheres of government. These through the Municipal level who operates own preferential policies. The Act also provides for the advancement of black people, women, youth and people living with disabilities through the awarding of preference points to those tenderers that display advancement of these groups within their firms. However there is currently a lack of substantial progress in the advancement of these groups. The revised PPPFA is envisaged to give rise to improved procurement provisions which will enable delivery of the set targets within the BBBEE codes of good practice

### 3. INTEGRATED EMERGING CONTRACTOR DEVELOPMENT STAKEHOLDERS



### 3.1 Emerging Contractors

In all Construction Projects, implemented within the municipality, thirty (30) percent (%) of the construction value, excluding Preliminary and Generals shall be set aside for the development of the emerging contractors.

An advertisement will be placed in the municipal notice boards on an annual basis for interested applicants to participate in the programme. The database of participants shall abide to the following rules:

- ✓ Contractors **MUST** strictly be residents of Emakhazeni Local Municipality
- ✓ Contractors must adhere to statutory business requirements (Tax registered, registered with CIDB, NHBRC or any relevant body)
- ✓ Contractors must inform the municipality in case of change in the ownership on the business
- ✓ Contractors may be required to spend a number of days on site
- ✓ Contractors must complete any training assigned in the course of the programme
- ✓ Contractors must make themselves available for capacity building programmes arranged by the municipality
- ✓ ONLY contractors registered on the municipality's "Emerging Contractors Database" will be considered for the programme

The development of the database will assist the municipality in planning to support and sustain the various levels of contractors with CIDB grading level of 1-3. Unregistered contractors will not be considered by the programme.

Targeting of contractors should be primary in municipal projects. Targeting will be read in conjunction with Targeting for Contractor Development Programmes Guidelines which indicates the following:

#### 3.1.1 Process for the appointment of emerging contractors

The Municipality shall open a process of inviting Small Medium and Micro Enterprises (SMME) to submit documentation for the establishment of the "Emerging Contractor Database.

Upon closure of the database, the emerging contractor development database shall be compiled.

The database shall be valid until all active emerging contractors are upgraded to CIDB Level 3 and /or conditions dictate so, based on the SMME's remaining longer than 3 years in the database.

The database may be re-considered by council, considering the material conditions that exist.

The following are consideration shall be applicable in the appointment of subcontractors:

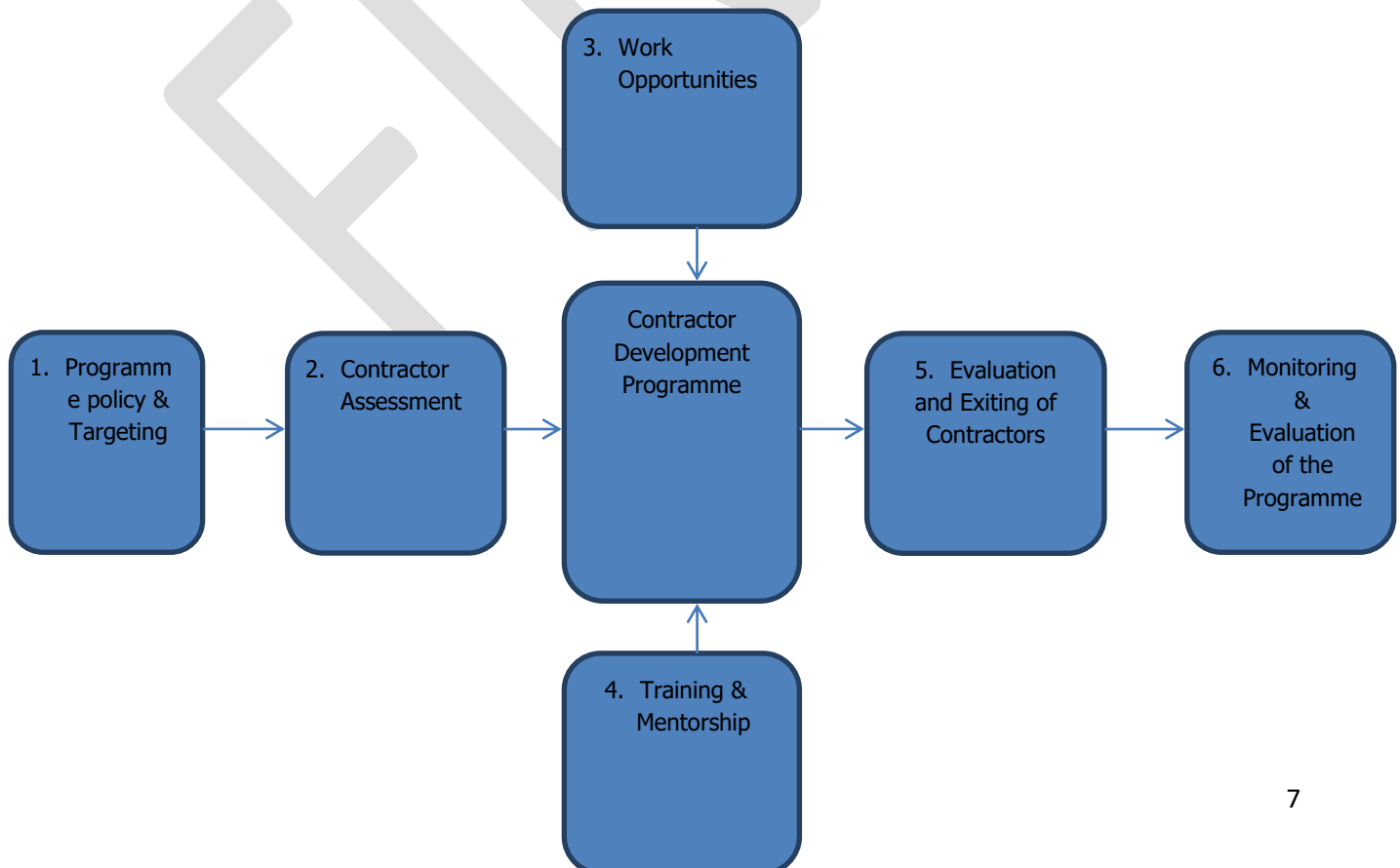
- ✓ Only emerging contractors who are registered on the municipality's "Emerging Contractors Database" will be considered for the programme
- ✓ Emerging contractors should be residents of Emakhazeni Municipality
- ✓ Appointment of subcontractors shall be done in an alphabetical order per town/ unit of their residence for a period not exceeding 3 years and / or all the subcontractors have been developed to CIDB grade 3 and database is considered exhausted and /or council has reviewed the database, in which case, Council may resolve on the different criteria, informed by the prevailing material conditions.

The following principle guideline should be applied to establish the number of contractors to be targeted for enrolment into Contractor Development Programmes (i.e. the "how many"):

Affordability and Sustainability: The number of emerging contractors to be enrolled into and supported by a CDP should be limited by the affordability of the municipality to provide:

- ✓ Work opportunities that will sustain all participants
- ✓ The necessary training and mentoring for all participants

### Overall process for implementing contractor development



### **3.2 Exclusions from participating in the programme**

- Contractors owned or with shareholders who are employed in government, either provincial, national or municipality are prohibited from participating in the programme
- Contractors whose immediate family members are employed by the municipality either as councilors or officials and such councilors and officials have not declared their interest with the municipality, are excluded from participating in the programme.
- Contractors who have previously benefitted and exit the programme with CIDB grading 3 are excluded to participate through a different company / entity
- All contractors and / or subcontractors that fail to perform subcontracted work without valid reasons and / or refuse to take valid instructions from the main contractor to aid successful completion of the project, shall be excluded from further participation in the programme.
- Contractors who do not submit their documents to CIDB for grading when qualifying to do so shall be excluded from further participation in the programme.
- All Contractors and / or subcontractors who are not CIDB compliant and fail to be assisted in ensuring compliance, shall be excluded from further participation in the programme.

### **3.3 Municipality**

The role of the municipality is ensure adherence in the implementation of the programme, ensure economic development of emerging contractors, improvements in CIDB grading and a conducive environment for SMME's to grow. The municipality will continually liaise with the relevant stakeholders to ensure the success of the programme

### **3.4 Projects**

The municipality should annually identify projects for contractor development based on the CIDB grade of contractors targeted (1-3). Project identification will consider project complexities



### **3.5 CIDB**

The role of the CIDB will be the registration of contractors, support, facilitate and promote the industry. The government is spending a lot on infrastructure delivery, and so the CIDB is intending to simultaneously meet socio-economic objectives and transform the industry. Another objective is to promote sustainable contracting, as it was one thing to move up to higher grade, and another to sustain it.

### **3.6 CETA**

CETA's mission is to create a solid skills base as a foundation for infrastructural development and economic empowerment. They set standards for accredited training providers in the industry to adhere to.

### **3.7 Access to Funding and Subcontractor Payment**

One of the biggest challenges facing SMME's is access to funding. The municipality shall assist the subcontractors with funding through various funding models, including but not limited to agencies. All funding support to the SMME's shall comply with all the relevant legislations.

Noting the challenges of payment of subcontractors by the main contractors, the municipality shall solicit the cession agreement to ensure direct payment of the subcontractors by the municipality through the cession agreement.

Before commencement of the works, main contractor and subcontractor shall agree to the bill of quantities and applicable sums of money involved in the subcontracted work and / or scope of work in line with the Bill of Quantities, should the subcontractor fail to execute the subcontracted work, or be paid without actual scope of work executed, the subcontractor shall be disqualified and be excluded from further participation in the programme.

### **3.8 Social Partners**

Social partners implement infrastructure projects as per their SLP commitments to the municipality. In order to ensure that the programme goals are achieved an agreement must be reached to ensure that they also adopt this policy in implementing their projects.

### **3.9 Sector Departments and Nkangala District Municipality**

Nkangala District Municipality is currently implementing contractor development programme that is similar to the one envisaged in this policy and as such care must be

exceeded in the implementation. However, the biggest challenge for the municipality has been in the implementation of sector department projects within the municipality. The departments generally do not make provision for contractor development programme and engagements must be made to ensure buy-in in the programme.

### **3.10 Capacity Building**

Guidelines for Implementing Contractor Development by CIDB suggest it is a good practice to require contractors to contribute to their own development. This commitment ensures that contractors are not only participating in the CDP to obtain work. Human resource development in the construction and building industries largely relates to the development of management and trade skills Capacity building must be conducted with all relevant stakeholders e.g. CETA and NHBRC and focus on the following main areas to ensure the success of the programme:-

- Technical skills;
- Access to finance;
- Mentorship/Contract Management support;
- Financial and business training support

Mentoring should be provided for emerging contractors in order to avoid non-performance. Although guidelines for Implementing Contractor Development proposes that mentors must be registered with the Council of Project and Construction Management Professionals, the municipality suggest that the project engineers and/or main contractors.

All Municipal Construction Projects below the minimum project value of TWO million Rands (R2 000 000), shall be used to further develop the contractors, who qualify for the targeted project, that graduated from the municipal contractor development programme

## **4. MONITORING AND EVALUATION**

Monitoring and evaluation must be the responsibility of Local Economic Development, Supply Chain and Project Management Unit. Contractors should be re-evaluated and meet the requirements for:

- ✓ CIDB contractor competence accreditation
- ✓ Upgrading to a higher grade designation

It must be noted that the contractor must lodge a formal application to the CIDB for an accreditation of the contractor's competence and for a contractor upgrade

## **5. FINANCIAL UPGRADING**

The contractor must be assessed to determine a financial upgrading factor and to measure how close the contractor is to upgrading to the next grade designation. This determination is in line with the requirements of the CIDB Register of Contractors based on best annual turnover, largest contract and available capital.

## **6. POLICY ALIGNMENT**

This policy is aligned to the Guidelines for Implementing Contractor Development Programme by Construction Industry Development Board. It is also important that other best practices be derived from other municipalities and government departments