



human settlements

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STRATEGY FOR ACTION AGAINST DEFAULTING CONTRACTORS OF GOVERNMENT SUBSIDISED HOUSING PROJECTS

1. Introduction

The Strategy was approved on 15 May 2012 by the Minister for Human Settlements. The purpose of the strategy is to confirm action required to be taken against building contractors involved in Government subsidized housing projects who deliver shoddy workmanship and/or fail to comply with their contractual obligations.

There are many human settlement projects that are financed through Government's Housing programmes that are not completed due to, inter alia, contractors who default on their contractual obligations and as a result houses are often incomplete or are required to be reconstructed or rectified due to the use of substandard materials or as a result of shoddy workmanship. The aforementioned practices result in substantial financial loss and wasted resources.

Since the introduction of the National Housing Programme in 1994, numerous policies, strategies, operational guidelines, monitoring and evaluation systems and legislative mechanisms have been developed and implemented to ensure the implementation of a sustainable housing programme. Poor building practices have become a regular occurrence due to non-adherence to the legislation, policies and systems.

2. Legislative Provisions

a. Provision of the Housing Act, 1997 and the National Housing Code 2009

In terms of the Housing Act and the National Housing Code of 2009 it is the responsibility of a provincial Department of Human Settlements or a Municipality as a developer of projects financed through the National Housing programmes must manage a housing project and are responsible for:

- (i) Managing Housing and Human Settlement Grant funding allocated to a particular project;
- (ii) Appointing NHBRC registered contractors through procurement compliant procedures to implement housing projects;

- (iii) Concluding legal industry standard contracts with appointed contractors;
- (iv) Make progress payments to contractors based on the principle of value for money achieved as prescribed in the PFMA; and
- (v) Enroll all housing development projects with the National Home Building Registration Council (NHBRC).

b. The role of the NHBRC

The NHBRC was established in 1998 in terms of the Housing Consumer Protection Measures Act, 1998. The NHBRC is to act as a regulator of building contractors, and to provide a structural warranty on all enrolled houses for a period of five (5) years.

In relation to subsidized housing projects the NHBRC must:

- (i) Certify that the house designs meet the geotechnical requirements for the specific development area;
- (ii) Enroll housing projects;
- (iii) Perform inspections of projects/houses to ensure adherence to norms and standards;
- (iv) Register competent building contractors;
- (v) Deregister incompetent building contractors;
- (vi) Certify adherence to norms and standards by contractors before progress payments are made by Developers;
- (vii) Certify that all defaults have been rectified as per the “snag list”;and
- (viii) Enroll each house under the warranty scheme

The authority to institute disciplinary action against defaulting contractor clearly vests in the NHBRC.

c. Construction Industry Development Board (CIDB)

Home-builders register with the CIDB on a voluntary basis. The CIDB used financial viability and capacity to deliver, based on past performance as the major considerations for registration and grading of contractors. Every three (3) years contractors are reassessed and grading is revised in accordance with past performance. The CIDB relies on consumer complaints to update contractor performance on their project register.

d. Division of Revenue Act (DORA)

The annual Division of Revenue allocates the division of the national revenue to Provinces and Municipalities in terms of specific grant programmes. In relation to

housing development, the Human Settlements Development Grant (HSDG) is allocated to the nine (9) provinces who assume accountability for such allocated funds upon receipt thereof.

An Accounting Officer of the funds received through DORA, Heads of Human Settlement/Housing Departments are obliged to follow due process to mitigate financial loss to the fiscus. It is therefore incumbent on the HODs to refer all cases where housing development contractors have defaulted and where contracts are terminated to the State Attorney to take the required legal action. In the case of municipal housing development contracts, the municipal manager should institute legal action to recover costs and any financial loss.

3. Fraud and corruption : The role of the special Investigation Unit (SIU)

The SIU has a mandate to conduct investigations into specific cases where fraud and corruption and or mal-administration in the Government financed housing development domain are detected.

It is therefore proposed that in instances where housing contractors fail to comply with their obligation and where prima facie evidence exists that fraud and corruption and/or related activities played a role, the SIU be request to investigate such cases within the available budget for such investigations.

4. REASONS FOR POOR QUALITY HOUSES

There are a number of reasons that lead to poor quality housing delivery. These are:

- (i) Non-enrolment of projects with the NHBRC by the Provinces and Municipalities giving rise to inappropriate designs and absence of NHBRC quality control measures. Where factors such as soil conditions, storm water management systems are disregarded this often compromises the structural integrity of the dwelling. It is illegal not to enroll an approved housing subsidy financed project with the NHBRC.
- (ii) Awarding of housing contracts to non-registered NHBRC registered home builders or incompetent contractors
- (iii) Poor or improper contract conditions such as performance indicators and lack of clarity on norms and standards and building specifications.
- (iv) Lack of or poor quality control inspections by developers and/or NHBRC.
- (v) Inappropriate registration of contractors who may not have the ability to implement housing projects.
- (vi) Insufficient punitive measures against defaulting and incompetent contractors.

(vii) Ineffective municipal quality control inspections.

5. Approved Strategy

The strategy incorporates renewed undertakings and quality assurance commitments in partnership with the NHBRC. These are as follows:

a. Agreement with MECs responsible for Human Settlements/Housing

In order to eliminate poor construction practice and to ensure that competent contractors are appointed to implement housing projects, the Minister of Human Settlements reconfirms and agrees the following with the MECs responsible for Human Settlements/Housing.

- (i) No housing project, funded partially or fully from the Human Settlement Development Grant, may be approved unless such project has been enrolled with the NHBRC;
- (ii) No contractor by be appointed to implement partially or fully subsidized housing project unless such contractor is registered with the NHBRC;
- (iii) Provinces and municipalities acting as developers must report all defaulting home builders immediately to the NHBRC when non-compliance is detected;
- (iv) Each contract concluded between a Provincial Department of Human Settlements/municipality and a registered contractor must include and be subject to the minimum norms and standards as prescribed by the NHBRC, the National Building Regulations and the Ministerial Norms and Standard in respect of building materials and practices;
- (v) As a developer of housing projects, the Provincial Department must ensure the availability of a competent programme/project management facility for each project, including the ability and expertise to carry out regular and efficient quality adherence inspections;
- (vi) Provincial project managers and/or inspectors who certify that work has been completed and that the construction of houses have been done according to norms and standards, must be held liable for any additional cost to rectify houses if found to be inconsistent with the standard;
- (vii) Accounting officers must follow due process of law to recover cost and any financial loss incurred due to non-compliance of contractors once contract agreements are terminated; and
- (viii) Every MEC responsible for Human Settlements will confirm and agree the abovementioned (paragraphs (i)-(vii)) with every Mayor of a municipality which has been appointed as a Developer by the Province.

b. Agreement with NHBRC

In order to eliminate poor construction practice the Minister for Human Settlements reconfirms and agrees the following with the NHBRC.

- (i) All applications/requests for enrollment of government subsidized housing projects will be finalized with speed within a time frame to be determined in accordance with effective delivery standards;
- (ii) The register of registered and deregistered contractors/home builders will be made available to all province and municipalities and be updated as and when required;
- (iii) Contractor/homebuilders who default on contractual obligations, who deliver work of poor quality and who do not adhere to the NHBRC norms and standards and National Building Regulations will be subject to the provisions of Section 11 of the Housing Consumer Protection Measures Act, 1998 and be disciplined according to the findings. To this end, the NHBRC must through their Compliance and Enforcement Unit, put a system in place to identify defaulting homebuilders and prevent them from renewing their NHBRC registration unless they have met the terms and conditions of their contracts.
- (iv) The NHBRC must investigate the possibility and legality of establishing a record of owner/directors of registered home building companies and whether such individuals, whose companies have been deregistered in terms of Section 11 of the Housing Consumer Protection Measures Act, could be prevented from registering a new company with NHBRC and advise the Minister accordingly.
- (v) Inspectors of the NHBRC who certify projects/homes to have progressed/have been completed satisfactorily in accordance with the set norms and standards, will be held liable if it is found that construction of houses has not been done accordingly; and
- (vi) The NHBRC must ensure that it has sufficient resources to its disposal to manage the enrollment of projects and to carry out inspections of /in all projects as agreed upon by the Department of Human Settlements and the NHBRC.

6. Fraud and Corruption

Where home builders fail to comply with their obligations and where fraud and corruption is detected, the SIU be requested to investigate such cases for possible civil action against perpetrators.

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GIS SPECIFICATION DOCUMENT FOR THE SUPPLY OF GPS COORDINATES AND OTHER SPATIAL DATA TO THE KZN DEPARTMENT OF HUMAN SETTLEMENTS.

On the 8 February 2012 the GIS Specification Document was approved by the Head of Department for Human Settlements: KZN.

The purpose of the GIS Specification Document is to set the standard for the supply of digital spatial data to the department for incorporation into the Geographic Information System (GIS) and as part of the project roll out.

1. FORMAT REQUIREMENTS OF SPATIAL AND ATTRIBUTE DATA

The format of delivery of the spatial data must be in ArcView Shape File format. The data must be 100% “clean” and free of any undershoots, overshoots and duplicate entities. All lines must intersect with zero tolerance should the data be line data. All polygon datasets must be free of silver polygons.

The attribute data accompanying the spatial data should be delivered in DBASE IV (dbf) file format.

2. CO-ORDINATE SYSTEM AND ACCURACY

Spatial data provided to the department will only be accepted in Geographic coordinates (longitude and latitude in decimal degrees) on the Hartebeeshoek '94 datum.

The co-ordinate system on which the data is delivered must be clearly marked on the media as well as in the metadata. Data must be supplied on a clearly labeled CD or DVD media regardless of whether it is emailed or not. The media must be labeled with a brief description of the data.

The absolute spatial accuracy per dataset must be quoted in the metadata in meters. The accuracy of the data will vary per dataset but must be commensurate with the purpose for which it was captured or supplied as well as the scale it was intended for use.

3. DELIVERABLES

The GIS deliverables must include:-

- (i) Check plots of the GIS data at a suitable scale
- (ii) Spatial and attribute data on CD-ROM in the above-mentioned format

- (iii) A completed Metadata form preferably completed in ArcGIS 9.3.1 metadata record, for each new spatial data set delivered to the department.

E-mail submission are not acceptable for project deliverables.

Any queries in this regard should be directed to Mr Sthembiso Mthembu at phone number 031 3365355 or email:sthembiso.mthembu@kzndhs.gov.za

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