

Dear stakeholder,

24 February 2009

Please find the notes as collated on the discussions and resolutions taken at the Client Focus Group Meeting on 23 February 2009. You are most welcome to submit additional comment, amendments or revisions to the notes where you deem necessary, by **27 February 2009**.

Notes on 1st Clients Procurement Focus Group held on 23 February 2009 at the South African Reserve Bank

1 Distributed documents

The following documents were distributed prior to the meeting and were tabled at the meeting:

- 1.1 Collated comments on:
 - a) GCC 2009 (Annexure 1)
 - b) PROCSA Client / Consultant Professional Services Agreement (Annexure 2)
 - c) CIDB Standard Professional Services Contract (Annexure 3)
- 1.2 Memo prepared by Advocate Botha (CIDB Legal Adviser) on the GCC 2009 Dispute Board Rules (Annexure 4)

2 GCC 2009 (Draft)

- 2.1 Clients recognised that GCC 2004 was due for a next edition as it has been in use for 5 years. However they felt that there was no urgency to do so as it was performing satisfactorily with minor shortcomings.
- 2.2 The following shortcomings in GCC 2004 should be addressed:
 - a) the provision of definitions for plant and equipment which enable GCC 2004 to be more readily applied in contracts involving electrical and mechanical work;
 - b) the removal of the requirement for the engineer to rule on disagreements as the cause of much the disagreement on current contracts may be attributable to the engineer, defective design or incomplete designs at the time that tenders were awarded;

- c) the introduction of an agent to look after discipline specific matters on a multidisciplinary contract;
 - d) the correction of the references to CPA indices to make them current.
- 2.3 The following principles for GCC 2009 were supported:
- a) the revision of the performance guarantee along the lines of that of the JBCC;
 - b) the revised structure which groups topics under more logical headings;
 - c) the proposed definitions for Plant and Equipment.
- 2.4 Clients rejected the proposed amendments for GCC 2009 relating to dispute resolutions, particularly those pertaining to:
- a) the detailed amicable procedures (proposed that they belong in guidance notes and not in the contract);
 - b) dispute board procedures (as analysed by the CIDB Legal Advisor);
 - c) the limitation of the matters which may be referred to adjudication;
 - d) the engineer resolving disputes as an impartial party.
- Clients have up until 25 February 2009 to provide any additional comment on the analysis of the Dispute Board procedures by the CIDB Legal Advisor.
- 2.5 It was agreed that work needs to be done on developing a CIDB or industry practice note which provides guidance on how to avoid disputes or to resolve them without resorting to the formal procedures for adjudication or mediation.
- 2.6 The following suggestions were recorded:
- a) some of the definitions be revisited as there appeared to be some clashes, e.g. "Contract Sum" and "Prices" and some of them don't appear in the text e.g. "Lump Sum";
 - b) the meaning of the terms "approved", "acceptance" and "approval" be reconsidered as the differences between them were not understood;
 - c) the terms of payment for each of the pricing strategies be spelt out in the text rather than described in definitions i.e. how is the amount due to be assessed
- 2.7 Clients expressed the need for a greater harmonisation in terminology and procedures between JBCC and GCC, the two local forms of contract that are most widely used by national and provincial departments and local authorities in the following areas, to remove confusion in the minds of officials and contractors alike:
- a) terms for lump sum versus activity schedule (the GCC definition of activity schedule is a series of lump sums);
 - b) term for engineer versus principal agent - GCC is used on building contracts and multidisciplinary contracts where the client may have several agents;
 - c) the initiator of payment certificates – the contractor or the engineer.
- 2.8 Clients called for flexibility in who generates payment as there are distinct advantages in requiring the engineer to be responsible for the preparation of payment claims as is the case with JBCC as:
- a) this ensures that payment certificates are received by a specified date;
 - b) payments to emerging contractors who struggle to prepare statements is not delayed;

- c) eliminates the avoidance by the contractor of making claims for payment when penalties exceed the amount due and the manipulation of certificates around financial year ends.
- 2.9 It was resolved that it would be essential for the CIDB to engage the Client Forum to review the final version of GCC 2009 incorporating all the above suggestions, before endorsing it.

3 PROCSA Client / Consultant Professional Services Agreement

- 3.1 Clients questioned the need for a PROCSA document to replace or to be used alongside the CIDB SPSC in the public sector as the drafters of the PROCSA document have not provided any substantive motivation for doing so, or an exposition of the deficiencies of the CIDB SPSC.
- 3.2 In terms of legislation, Clients expressed severe reservations that the state attorney would support the use of the agreement in the public sector as the agreement:
- a) is incompatible with the standard format for procurement documents specified in the CIDB Standard for Uniformity in Construction Procurement;
 - b) appears to be very one sided, placing most of the risks on the client;
 - c) is contrary to the requirements of the Municipal Finance Management Act, which does not permit the consultant to retain copyright of all documents produced;
 - d) requires written proof of funding or a guarantee acceptable to the consultant;
 - e) requires the client to limit the consultants liabilities in a manner that is inconsistent with current norms and standards in government (see clause 7).
- 3.3 In terms of management, Clients expressed concern that the agreement:
- a) made no provision for managing time and cost, the essence of any service or works contract and certainly did not enable the client to manage the delivery process or provide incentives for the consultant to do so;
 - b) does not make provision for the adjudication of disputes or the referral of disputes for final resolution to a court of law;
 - c) introduces many requirements without any sanctions or remedies, apart from termination, should such requirements be breached;
- 3.4 It was resolved that clients opposed the inclusion of the PROCSA Agreement in the CIDB Standard for Uniformity in Construction Procurement.

4 CIDB Standard Professional Services Contract

- 4.1 Clients agreed that the CIDB SPSC is well understood and well suited to the appointment of consultants following a competitive selection process.
- 4.2 Clients commented on the excellent alignment of this document with public sector client requirements and the format for procurement documents included in the Standard for Uniformity in Construction Procurement.

- 4.3 Clients accepted the proposal to amend the CIDB SPSC to accommodate:
- a) requirements for sectional completion;
 - b) provision for the amending of the Contract Price for changes in the programme for the services due to circumstances beyond the Service Provider's control
- 4.4 No amendments other than that outlined in 4.3 above were made.
- 4.5 Any additional comment on the proposed wording will be forwarded by 27 February 2009 so that the amendments can be finalised.
- 4.6 It was resolved that the proposed amendments be circulated to the Client Forum members for final comment before publishing the CIDB SPSC 2009 version.

Kind regards,



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