

Mr Malcolm Pautz
SAICE

7 September 2009

CIDB POSITION ON THE GCC (2009): DISPUTE BOARD PROCEDURES

The South African Institute of Civil Engineers (SAICE) submitted a proposed amended version of the SAICE proposed General Conditions of Contract for Construction Contracts (GCC) to the CIDB. The purpose of submitting the GCC to the CIDB, is to include it in the Standard for Uniformity (SFU) that is issued in terms of the Construction Industry Development Regulations, 2004. This (2009) edition of the GCC added a Dispute Board to be appointed (if chosen) at the outset of a contract for the purpose of settling disputes. The Dispute Board is proposed in addition to options for amicable settlement, adjudication, arbitration and litigation. Following comment on the document by the CIDB, a fifth draft of the claims procedure was proposed for approval and inclusion in the SFU. The fifth draft was discussed on Wednesday 2nd September 2009 with the focus on the dispute provisions.

The meeting suggested that the outstanding issues on GCC could be resolved should:

- 1) SAICE confine the role of the Dispute Board to dispute avoidance and make provision for the independent adjudication of disputes via an adjudicator. This will remove the primary objection to the proposals for a Dispute Board which obtains information through site visits and perceptions, offers advice on a matter and then could be called upon to rule on the same matter. This will enable the innovative mechanism proposed by SAICE to be used to minimize disputes within a South African context.
- 2) Disputes arising from whatever cause during the course of the contract must be capable of being referred to adjudication. This means that the current limitations on referring disputes need to be removed as there are some circumstances, particularly those relating to the forthcoming introduction of contractor performance reports, which might need to be resolved through adjudication.
- 3) The procedures must be such that the adoption of the amicable route or any other route to resolving disputes does not provide a means for by-passing adjudication.

The CIDB wishes to place on record its sincere thanks and appreciation to the drafters of the GCC 2009 for the co-operation and support and adequate responses to issues that were identified for clarification or possible amendments. Should the issues listed herein be suitably addressed in GCC 2009, the CIDB will proceed with the

formal adoption of the GCC 2009 in the CIDB Standard for Uniformity.

We look forward to your responses to the provisions as advised herein and the next version of GCC 2009 for approval.

Kind regards,

A handwritten signature in black ink, appearing to read 'Inba Thumbiran', with a stylized flourish above the name.

Ms Inba Thumbiran
Programme Manager: Procurement and Delivery
Construction Industry Development Board