

The Chief Executive Officer
SAICE

Attention: Mr Dawie Botha

20 January 2010

CIDB POSITION ON THE GCC 2010 AND ADJUDICATION BOARD PROCEDURES

The South African Institute of Civil Engineers (SAICE) submitted General Conditions of Contract for Construction Contracts (GCC, 2010) to the CIDB on 14 December 2009 for consideration and approval for inclusion in the CIDB Standard for Uniformity for public sector procurement.

A legal review of the document was undertaken on the points raised previously with SAICE in a letter dated 7 September 2009. A subsequent meeting held on 18 January 2010 was necessary to clarify the resultant observations that stemmed from these points, explained as follows:

- 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.***

CIDB Comment: The CIDB questioned Clause 5.1.1 and 5.3.1 of the SAICE Adjudication Board Rules, in relation to the above recommendation, which calls for the separation of duties of the Board for dispute avoidance and the adjudication procedure. The CIDB advises that in order to ensure impartiality of the Dispute Adjudication Board, SAICE should stipulate in their rules that the Board is not allowed to visit the site in question without both contract parties being present, as well as a limit on the intervals that the Board is allowed to visit the site. A period of not more than 75 days apart, and not less than 140 days apart, is deemed to be reasonable.

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.

CIDB Comment: Clause 10.3.1.4 of the GCC 2010 provides conditions under which a dispute may be declared. This is not in accordance with the suggestion above.

The CIDB acknowledges the excellent work done in the revisions presented in the latest version of the GCC 2010. However, the following general comments are necessary:

- An approval of the GCC 2010 would, by default, include the approval of the Adjudication Board Rules. The CIDB therefore requires confirmation in the document that any changes to the Adjudication Board Rules will be subject to CIDB approval.
- On closer scrutiny of the Adjudication Board rules, Clause 5.4.3 of the Adjudication Rules was found to contain a provision that prohibits the referral of a dispute to a court. This prohibition cannot be approved and it would be appreciated if SAICE could amend this provision.
- The final revision of the GCC 2010, must verify that no provision exists for the bypassing of adjudication. Clause 10.4.2 must be revised accordingly.
- The CIDB will only embark on an approval process once the requirements and suggestions are clearly evident in the GCC 2010 version. Failure to do so may cause unnecessary delays to the approval process.

Kind regards,



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Construction Industry Development Board