

MBA looks to tackle unethical contractual practices in construction industry

With the local construction industry having been in crisis for more than a decade, Mohau Mphomela, executive director at Master Builders Association North, cites the prevalence of unethical contractual practices as one of the main causes.



Image source: Gallo/Getty

“A healthy and competitive construction sector is a national asset, and it’s also a major lever of transformation. It’s vital that the industry faces up to this one challenge that is poisoning the whole value chain and will ultimately hamper South Africa’s chances of an infrastructure-driven economic recovery,” he says. “Long-term sustainability will only be possible if we face up to this problem, and then commit to fixing it.”

Joint Building Contracts Committee contracts

Many sub-contractors say that the fundamental problem is the insistence by developers and other clients that Joint Building Contracts Committee (JBCC) contracts be amended to shift the risk unevenly down the construction value chain, largely to the detriment of sub-contractors. In a business environment where work is scarce, they are able to distort normal industry practices to their own advantage. However, this short-term approach means that the downstream value chain is constantly under cash-flow pressure. Many close and all are unable to provide stable and fair employment for their staff; as importantly, new entrants to the industry are discouraged.

Typically, these contractual amendments mean that construction companies often find themselves having to accept extended payment terms and no payment guarantees, while also having to agree to a waiver of lien.

Another detrimental practice is that developers insist on bank-issued guarantees which are expensive and reduce contractors' already-thin margins.

"Overall, these amendments tend to distort risk allocation contrary to the intent of the JBCC suite of contracts. Transferring more risk down the value chain unfairly impacts smaller contractors who are least well placed to mitigate it. This has been a problem for many years and, despite several interventions, has become the norm because contractors feel they have no option, given the lack of work," Mphomela says.



Lack of formal competency certification costing construction firms

29 Apr 2021



Restoring building contract ethics

In a move to bring the industry together to discuss these issues and generate solutions, the Master Builders Association, in conjunction with Databuild, will be hosting a roundtable with a panel of experts to address "How to restore building contract ethics and spread financial risk equitably across the build environment".

A key objective will be to obtain buy-in from everybody in the built-environment supply chain to conform to the payment terms in the JBCC and MBSA documents, and to urge development and funding entities to restructure construction contracts and implement best practices and industry standards.

"This is an important initiative on the journey towards returning the construction industry to health. It's vital that participants feel they can talk freely, and I'm delighted to announce that a speaker from the Competition Commission will be present so there will no possibility that this discussion could be construed as collusive," concludes Mphomela. "It's vital we get this right as construction is one of the foundations of any economy."

The Master Builders Association North webinar will take place via Zoom on Wednesday, 9 June, 2-4pm, at a cost of R200 per person. To register, go to www.mbanorth.co.za

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