

How focusing on both rights and obligations will benefit SA's construction sector

By [Ian Massey](#)

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South Africa's construction sector is facing strong headwinds, not least of which is the load shedding currently causing havoc in South Africa. As construction contract specialists, we are seeing that the initial optimism for recovery on the back of the promised massive public infrastructure projects is being overtaken by uncertainty and a shortage in projects available for tender.

In addition to the issue of work shortage, there are further factors contributing to increased risk, stunted growth and decline in the industry. One of the more common issues of concern is the Treasury requirement applicable to public sector contracts which imposes contract participation goals (CPG) whereby a significant percentage of the main contractor's work must be awarded to SMME subcontractors. A second, sometimes related issue is community unrest in the form of now-infamous local business forums which have earned an unflattering reputation as the construction mafia.

Both of these complex risks can be mitigated, but to do so requires industry players to take a step back. Without the influence of an adversarial outlook, there are some solutions available to employers (the parties commissioning the work) and contractors alike.

Contract participation goals

Contract participation goals have been put in place to ensure that small, emerging contractor organisations are able to participate in projects. In this way, they gain valuable experience, can be mentored and can build sustainable businesses.

Generally, there is support in the industry for the principle of developing emerging businesses in the sector. But qualifying CPG contractors who meet the minimum CIDB-regulated level are not always available, particularly in more remote parts of the country. In addition, there are serious risks for contractors such as progress, quality and the cost involved in working with CPG subcontractors.

Statutory requirements of parties

The requirement for CPG subcontracting is driven by National Treasury and set out in the CIDB Best Practice document gazetted in November 2017. The employer (referred to as the Organ of State) is bound by statutory requirements.

It is the responsibility of the employer to interact with the local community in the area, set up community liaison committees, and agree dispute resolution processes.

Further, a feasibility study must be carried out to ensure that the CPG targets are attainable. The employer must compile a database of target enterprises available to carry out the CPG-allocated work as well as available labour resources. All this information must be included in the tender enquiry document to enable prospective tenderers to assess the inherent risk and compile bids.



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In our experience, these requirements are generally not complied with. The risks are being absorbed by the contractors – an unsustainable predicament.



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Community unrest / local business forums

In its role as the employer in public contracts, the state generally places community unrest risk squarely on the shoulders of contractors and they are obligated to absorb the risks of any disruptions due to local business forums.

Way forward

Successful contract outcomes are difficult to achieve in adversarial relationships and a collaborative approach requires a mental reset. However, risks related to the many complex issues in South Africa's construction sector can be mitigated when all parties in contracts live up to their reciprocal rights and obligations.

Awareness is key. Engineers who usually draw up construction contracts must be made aware of the requirement for CPG contractors and community engagement, as must CPG contractors and local communities.

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