

# Construction industry collaborates on solutions to key issues undermining sector

The Master Builders Association (MBA) North recently hosted a broad spectrum of panelists during a roundtable discussion on some of the key issues that continue to undermine the construction industry.



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“The robust discussion was a useful starting point because I think we now have a common understanding of what the challenges are – and that’s essential if we are going to find solutions,” says Brad Boertje, a construction risk management consultant and ADR practitioner for the Master Builders Association (MBA) North.

Opening the roundtable, Hardin Ratshishu, deputy commissioner at the Competition Commission, said that the commission supported any initiative that would strengthen the construction industry, especially given its fundamental role in a healthy, inclusive economy. However, he stressed that any resolutions the industry took to resolve the situation must not amount to collusion, and should be cleared with the commission before any implementation began.

## Amending standard contracts

The discussions confirmed that one of the most pressing and fundamental issues is the widespread practice of amending the standard contracts being used in the industry. Contracts such as the Joint Building Contracts Committee (JBCC) contracts were created via an inclusive industry-wide process to be fair, particularly as regards apportioning risk across the supply chain. As many panelists noted, the weak economy and meagre pipeline of projects has created a highly competitive environment with paper-thin margins. In such an environment, clients are able to demand that contracts are amended to shift risk to main contractors, who in turn shift it to subcontractors.

In theory, no contractor should sign an amended contract but, in reality, many feel they have no option because if they do not, they will lose the job as another contractor will accept the new terms.

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## 'On-demand guarantees'

A related issue is that guarantees are often drafted in such a way that they can be “cashed” without the contractor or subcontractor being afforded the opportunity to defend their position or make good on any outstanding issues (these are often known as on-demand guarantees). As a result, many contractors go out of business when guarantees are called in precipitately.

The point was made that the competitive environment and low margins affected the whole construction value chain and predisposed all players to accede to unethically altered contracts.

A further major issue for members was the deterioration of transparency and professional ethics in the industry. This impacts the whole project life cycle. A particular challenge is that main contractor and selected subcontractor tenders are no longer opened in public, and the main contractor is now routinely excluded from the adjudication of selected subcontract tenders.



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### Some possible solutions were put on the table:

- The JBCC contracts were originally created by the industry – why not get the industry to come together again to refine them, if necessary, and recommit to them?
- Obtain a directive to adhere to the standard JBCC and MBSA construction guarantee formats, which at least have conditions that have to be met before guarantees can be called.
- Reduce the ongoing contractual issues by moving away from the adversarial element that is implicit in current contracts by restructuring them as vehicles for joint risk, so that everybody is on the same team.
- Lobby banks and finance houses to fund only those projects which use unamended contracts.
- Increase efforts to educate industry players about the contracts and the risk implications of signing amended contracts.
- Find ways to get principal agents and professional quantity surveyors to maintain a high level of transparency and ethics.

Mohau Mphomela, MBA North CEO, says that the organisation will be prioritising the issue of the illegal amendment of JBCC contracts. “MBA North will be engaging with all stakeholders, including the JBCC and the Competition Commission, among others, to find ways of reducing the increased risks that contractors have had to assume for quite some time.”

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