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Introduction

Construction projects play a vital role in South Africa’s development, not only in respect of its physical infrastructure, but also in its broader economic and social development. They also create employment opportunities on a large scale.

The construction industry is valued at approximately ZAR 145 billion and provides job opportunities to approximately 429,000 individuals.

The industry continues to grow. This handbook provides some basic knowledge and understanding regarding contracting in this industry.
What is a contract?

A contract is an agreement entered into between two or more people with the intention of creating legally enforceable obligations. Once properly concluded, a contract is binding on each party. This means that each party has a legal obligation to do the things which the contract requires him or her to do. If a party does not do so, he or she may be in breach of the contract and the other party will have certain remedies, such as claiming for additional costs caused by the breach (called damages). They are also able to get a court order to force the party in breach to do what is required of them under the contract.

The contract should describe the following:

- What will be done;
- How long it will take to complete;
- How much it will cost and the payment terms;
- What will be done if either party defaults; and
- The extent to which the common law, which would usually apply, is adhered to.

Ensure that you have read the entire contract and understand the terms and conditions contained therein before signing.

Construction contracts

“It is not the beauty of a building you should look at, it’s the construction of the foundation that will stand the test of time.”
- David Allen Coe

A construction contract is an agreement between an employer (sometimes referred to as the client) and a contractor to construct, repair, modify, renovate or even demolish something in an agreed time frame, for an agreed price and to agreed standards.

The contract is signed by both the employer and the contractor. As with any contract, once the construction contract is signed, both the contractor and the employer must follow the terms of the contract or face possible legal action.
ROLE PLAYERS WITHIN THE CONSTRUCTION CONTRACT

Although the construction contract typically only has two parties, (the employer and contractor), there are a number of role players usually involved (appointed separately by either party or in some cases jointly by both parties), who assist in the construction process.

The role players are set out below (for a more detailed description of the role players refer to the sections that follow):

- **Employer**: Requires the construction work and provides payment
- **Employer’s Representative**: Acts on behalf of the employer and may be referred to as engineer, project manager, principal agent, etc.
- **Contractor**: Commissioned to construct the works
- **Subcontractor**: Appointed by the contractor to perform a part of the construction works under a subcontract
- **Adjudicator/Arbitrator/Court**: Settles disputes between the parties
Working with the employer’s representative

Employers usually elect to work through a representative who may be an architect, an engineer, a project manager, a quantity surveyor or any other qualified third party. The employer gives his or her representative the authority to act on his or her behalf in the execution of certain provisions of the contract.

The representative’s role is to oversee and administer the contract and the project itself. It is important to develop a good working relationship with the employer and/or his or her representative, as the contractor always benefits from trust and co-operation arising from this relationship.

Importantly, the employer’s representative is usually the person to whom all notices, invoices and claims must be submitted and is the person who determines the amounts due to the contractor.

There are some important steps a contractor can take to develop this relationship such as:

- Report all problems to the employer, through the appointed representative, as quickly as possible. This is very important if the problems could cause cost increases or delay completion.
- Handover in good time all notices, advices, time delay claims, bad weather reports, certificates for payment, invoices, lists of workers, plant on-site, etc.
- Make sure claims are submitted in strict compliance with the applicable contractual provisions, in writing within the period stated in the contract. If a claim cannot be prepared within the required period, extensions should be sought prior to the expiry of the period. If no extension is granted or communicated prior to the expiry of the time periods, the claim (even if not fully complete) and all documents available at that time should be submitted (explaining if possible why the claim cannot be completed and submitted on time), with any further documents and information required to be provided thereafter.
- Only make reasonable claims for additional payment. Inflated or frivolous claims will be rejected.
- Carry out all written instructions. If the instructions are difficult or impossible
to execute, talk to the representative who issued the instructions as soon as possible to see if it can be done in a different way — *do not delay*.

In this way you are likely to avoid disputes. Should a disagreement actually arise, it is best to look for possible compromises to resolve the dispute.

If the contractor disagrees with any decision taken by the employer’s representative, the contractor should, as soon as possible, give notice of a dispute (if stipulated in the contract) in terms of the contract to the employer’s representative. In some contracts time bars are also in place for when a dispute should be disclosed and submitted to an adjudicator or arbitrator. The contract should always be studied to see if such time bars apply, and to ensure that they are followed.

The type of contract form to be used will depend on the employer’s preference as well as the works to be executed. Two common ways in which parties can contract are either through a bespoke contract or a standard form contract.

**BESPOKE CONTRACT**

This is a type of contract that is not based on a standard form contract and is specially drafted and fully customised to cater for specific needs or requirements for the parties. This type of contract is not commonly used by lenders or banks who sometimes provide the funding of construction works. According to the Construction Industry Development Board (CIDB, additional information provided on page 13), when contracting with government entities (state-owned companies, government departments etc.) only standard form contracts should be used. This is to ensure a measure of consistency and uniformity in the terms of construction agreements concluded with the government.

**STANDARD FORM CONTRACTS**

There are usually risks and issues which will be common for all construction projects...
and activities. Accordingly, a number of “standard form” contracts have been developed which set out standard terms for a construction contract to cover the related issues and risks that will most likely apply. There are standard form contracts for both construction work and construction-related professional services (for example pure design work, or supervision work for construction).

Standard form contracts are useful because they can be obtained and understood in advance and, therefore, are usually easier to agree on instead of drafting the entire contract from scratch. The parties simply agree on specific changes to the standard terms based on the requirements for the specific construction project concerned.

It is therefore very important for a contractor to become familiar with the relevant standard form contracts, which could be used for the type of construction work which the contractor would normally consider tendering for. A list of standard form contracts that are typically used in South Africa is set out on page 13 (these standard forms are approved by the CIDB, further information regarding the CIDB is provided on page 13).
Specific types of standard form contracts (approved by the CIDB)

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Different ways of contracting

There are different ways in which a prospective contractor can participate in a construction contract. Some examples are listed below:

- **Main contractor** – The contractor himself or herself concludes a contract with an employer to build/construct something. (eg building a school).

- **Joint venture partner** – The contractor forms an agreement with one or more other contractors on an equal footing. They then jointly sign a contract to build/construct all or a part of the project. It is important to note that in this case, each contractor in the joint venture is responsible to the employer for all obligations under the contract. In other words, as between the employer and the members of the joint venture, each member of the joint venture is responsible for the actions or breach of any other member.

- **Subcontractor** – The subcontractor has an agreement with the main contractor to complete a part of the works, and will not have any contract with or obligations to, or rights against, the employer. Subcontractors will usually have the same rights and responsibilities as the main contractor. But since subcontractors contract with the main contractor, these rights and responsibilities will be exercised by and between the subcontractor and the main contractor.

The subcontractor does not have a contract with the employer, and in most instances does not have a relationship with them. In some instances, however, the employer can take up this responsibility.

When an employer wants to use a subcontractor of their choice, the subcontractor is referred to as a “nominated subcontractor” and in certain instances, the employer will take up risk due to its nomination.
Construction contract arrangements

These can be created by standard form contracts or catered for/created on a bespoke basis. The most commonly used arrangements are as follows:

- **Pure construction contract** – This is a form of contract where the contractor is responsible for the construction of the works as per the specifications and design provided by (or by a third party on behalf of) the employer. With this type of contract, the contractor bears the lowest risk. The price is often re-measurable, based on a bill of quantities (a document detailing specific prices for goods and services the contractor will provide) since the design is not usually complete and fully available at the point that construction work is to commence.

- **Design-build** – This is a form of contract where the contractor is responsible for both the design and the construction of the works. Due to this fact the contractor bears more risk when compared to a pure construction contract (including ensuring that the work is fit for its intended purpose). Therefore, this is a moderately priced arrangement; usually a fixed lump sum price is required for doing both design and construction, but appropriate adjustments to the price are provided for events outside of the contractor’s responsibility.

- **Engineer, procure and construct** – This is a form of contract where the contractor is responsible for design/engineering, procurement/sourcing of materials and construction of the works (including ensuring that the work is fit for its stated purpose). The contractor bears the majority of the risk and the employer will regard him or her as the single point of responsibility for the whole project. This is, therefore, the most expensive type of arrangement. The contractor is usually required to provide a fixed lump sum price, with fewer entitlements to adjustments than under any other arrangement, and must therefore appropriately price in the risks.

The table below illustrates the arrangements described above with regards to pricing.

**Price vs risk graph**
Construction Industry Development Board

The Construction Industry Development Board (CIDB) is a body created in terms of the CIDB Act to regulate the construction industry.

The CIDB Act 38 of 2000 (CIDB Act) requires and gives the CIDB the power to:

- Establish a national register of contractors and of construction projects to regulate, monitor and promote the performance of the industry for sustainable growth, delivery and empowerment.

- Promote improved delivery management capacity and a standard and consistent application of procurement policy throughout all spheres of government.

- Promote improved performance and best practice of public (government) and private sector clients, contractors and other participants in the construction delivery process.

- Promote continued and consistent participation of the emerging construction sector.

According to the CIDB regulations, public sector construction procurement must be undertaken on standard form contracts approved or prepared by the Construction Industry Development Board Regulations (CIDB Act Regulations). In addition, only contractors with an appropriate registration in terms of the CIDB Act and regulations may tender for and be appointed to perform construction work in the public sector.

The CIDB also encourages using these standard form contracts for private sector construction procurement to promote efficiency.

For more information regarding the CIDB as well as registration requirements, refer to the list of useful links on page 27.
Deciding on which contract to use

The idea of standard form contracts is to include provisions that are beneficial to both parties to the contract in accordance with good practice. Some contracts are, however, not based on the approach of good practice.

It is therefore important to be familiar with the three Rs when deciding which contract to use:

1. **Rights** – these are entitlements that one party has against another, entitling the party who has the right to compel the other party to do or not to do something.

2. **Responsibilities** – these are obligations to do, or not to do something, for the party who has the right.

3. **Risks** – these are the possibilities of something happening or not happening, which can result in additional liability arising for either or both parties. Risks can be absorbed, avoided, shared, transferred or mitigated under the terms of the contract. In this way, they can be dealt with in a way that both parties are comfortable with and not caught off-guard, as long as they are not ignored or not considered at all.

**Main contractor and subcontractor (rights, responsibilities and risks)**

Usually in construction contracts the main contractor will be responsible for the entire project. He or she will take responsibility for the safety of his or her employees and, most of the time, the subcontractors.

A summary of the more common rights, responsibilities and risks follows:

1. **RIGHTS**

   - **Timeous payments** – the main contractor is entitled to be paid within the time stated in the contract, failing which he or she should usually be able to claim interest on late payment.

   - **Extensions of time** – the main contractor can claim for an extension of time for completion in accordance with the instances catered for in the contract. The usual test is whether or not the particular act/incident that will delay time for completion is within his or her control or not.

   - **Access to site** – the main contractor has a right to access to the site at which the works are to be completed at the time stated and agreed in the contract agreement.
• **Upon termination of the contract** – the main contractor usually has the right to terminate the contract should a material breach or a *force majeure* event occur.

• **Appointment of subcontractors** – the main contractor usually has the right to appoint subcontractors if not otherwise provided for in the contract (see section regarding nominated subcontractors on page 11), whom he or she will be held responsible and accountable for.

2. **RESPONSIBILITIES**

• **Completing works** – the main contractor has the responsibility to complete the works within the time allocated in the contract agreement.

• **Guarantees** – in some instances, especially where the contract is a design-build or EPC (Engineer, Procure and Construct), the main contractor will be required to provide performance guarantees. This is a mitigation of risk strategy on the part of the employer to ensure that if the works are not performed to the correct standard or specifications, he or she will be covered accordingly. This will usually be priced in by the contractor.

• **Insurances** – the main contractor will in some instances be required to acquire insurance for the works, site, its employees, materials, etc. This is to ensure that risk remains mitigated at all times.

• **Administrative procedures/ compliance with all applicable laws** – the main contractor has to ensure that the required licences, permits and the like are obtained before, during and after the construction works proceed. It is imperative for the contractor to obtain all licences within the time periods allocated in order to avoid situations where these issues lead to a delay in the construction process and therefore a delay in the works.

• **Response to communications** – the main contractor has an obligation to respond to all communications from the employer or his or her representative at all times during the subsistence of the works. These might be variations, progress updates, suspension of works, access to site issues, delayed payment notices, etc.

• **Substantiation of claims** – in the instance where the contract agreement makes provision for a claim mechanism,
unless otherwise stated in the contract agreement, the contractor must substantiate such a claim in order to ensure swift settlement of such a payment.

- **Subcontracts** – main contractors should ensure that written agreements are entered into between themselves and the subcontractors. This is to ensure that they are able to properly hold such subcontractors liable should any issue arise.

3. **Risks**

**Financial loss:**

- **Errors in calculations** – the main contractor should ensure that measurements regarding the works price are done completely and accurately. The contractor must also include a contingency amount within the price for loss that could be suffered for risks for which no additional compensation is allowed under the contract.

- **Poor management** – the main contractor should ensure that he or she manages the project accordingly, especially when subcontractors are involved as this might lead to dire financial consequences.

- **Delays** – the main contractor should also ensure that materials are delivered on time, licences obtained and that his or her employees perform the works timeously. Failure to do so will lead to a situation where delays occur and depending on the wording of the contract the main contractor might be subject to delay damages.

- **Penalties** – the main contractor should be aware of the fact that depending on the wording of the contract, he or she might be liable for penalties should he or she fail to meet certain set dates or fail to meet certain performance guarantees. It is important to note though, that if a penalty applies, the employer does not have to prove that his or her loss stemming from the breach is equal to the penalty, but may not claim further amounts from the contractor in respect of the breach to which the penalty applies. In other words the contractor’s liability to pay damages for the breach is limited to the amount of the penalty.

- **Insolvency of employer** – the main contractor is at risk of this occurring especially when the employer is a private individual or small company. The main contractor can mitigate this
risk by acquiring bank guarantees from the employer guaranteeing performance (payment) of the amounts owed. The main contractor must remember that he or she has a builder’s lien over the constructed property which would stand against a claim for insolvency, provided that such a contractor maintains possession of the works.

Emerging contractors can develop management skills and technical expertise through association in joint ventures with established contractors.

It is important to set up a joint venture agreement which endeavours to assign risk, responsibility and reward fairly between joint venture partners.

**Joint venture partners (rights, responsibilities and risks)**

Joint ventures may be formed for various reasons, such as:

- Size and complexity of the project;
- If the project requires specialised skills and expertise.

A joint venture may be entered into as either the main contractor or a subcontractor which means the three Rs discussed on page 14 will apply to joint ventures.

A joint venture is a partnership which requires the partners to be jointly and severally liable for all obligations of the joint venture. Therefore, one partner may be sued for the full debt of the partnership; this partner in turn has a right to sue the other partner/ s for their pro rata share of the debt.
Main contractors must ensure that communication with subcontractors remains at an optimum level, and if there are various subcontractors, ensure that they have access to the site at the time which they are promised access.

The contractor must check if standard form contract conditions have been changed by the employer and how this will affect him or her.

Always stick to the timelines allowed within the contract.

Ensure there is a contract in place between the subcontractor and the main contractor. As a subcontractor one should look out for the following conditions, which should be avoided or negotiated against:

- Reduction of and/or set-off from amounts certified for payment to the subcontractor to cover amounts allegedly owed to the main contractor;
- Settling disputes only through the courts with no provision for adjudication or mediation;
- The subcontractor only gets paid once the main contractor has been paid by the employer; and
- Unreasonable retention percentages and periods.

Not all contracts will follow the terms/procedures listed below – this is intended to provide an overview of possible and common contract terms/procedures.

**CONTRACT PROCEDURES**

**Tendering and contract award**

- The tender is advertised by the employer or his or her representative;
- Contractors submit their tenders by the required date;
- The tenders are evaluated, and a tender evaluation report is produced recommending the preferred tender bid;
- The employer reviews the tender evaluation report and awards the contract;
- The contract is negotiated and eventually signed by both the contractor and the employer;
- The contractor is responsible for the provision of insurance and the surety/guarantee as stipulated in the contract;
- The site is officially handed over to the contractor;
- The contractor establishes his or her camp and site office and orders the materials required to start construction;
- The contractor sets out the work and starts construction.
Monthly activities during the contract

- Daily, weekly or monthly site meetings between the employer and the contractor and inspection of the work by the employer’s representative to ensure quality;
- Preparation of monthly payment certificates by the contractor;
- Review and certification of the payment certificate. Queries are referred to the contractor;
- The certified payment certificate is submitted for payment by the employer;
- Payment is made to the contractor within the period specified in the contract.

Handover procedure

- The contractor requests the employer to inspect the completed project prior to handover;
- The employer inspects the project, identifies outstanding items to be completed by the contractor prior to the handover of the project and issues a “snag list” to the contractor listing the outstanding items;
- The contractor completes the outstanding items and notifies the employer that the project is complete and ready for a final inspection;
- The employer (or his or her agent) carries out a final inspection. If he or she (or his or her agent) is satisfied that the works/project is now substantially complete, he or she or his or her agent will certify/confirm that the works/project is ready to be handed over;
- The contractor hands the works/project over to the employer (that is, the employer takes possession of the works/project).

Final account

- The contractor or the employer (as required in terms of the contract) prepares the final account during the handover period and submits it to the employer;
- The final account is certified and issued to the employer once the employer has issued a (practical/taking-over) completion certificate;
- The employer pays the final account less the retention money;
- This retention money is released to the contractor at the end of the defects liability period.

Defects liability period and final completion

- The contractor is responsible for making good items which show defects during the defects liability period;
• Near the end of the defects liability period, the contractor requests the employer to inspect the project and identify any defective items which the contractor is responsible for making good in terms of the contract;
• The money held in retention by the employer will only be paid when the contractor has properly completed the list of defects;
• Once the employer has issued a copy of the final completion certificate, he or she is required to pay the retention money due to the contractor.

The project is now complete
• The contractor is usually still liable for the repair of any latent defects for several years. Latent defects are defects which were not apparent and which a reasonable inspection would not have revealed during the defects liability period. Different contracts deal with the liability for latent defects differently.
• For latent defect liability not to apply it must be expressly excluded. If nothing is said about latent defect liability, the common law applies; namely the employer has a right to hold the contractor responsible for a latent defect within three years of the date on which he or she became or ought to have become aware of the latent defect.

Disputes and how to resolve them
• Most standard form contracts will cater for a dispute resolution mechanism which will state the procedure to be followed when a dispute arises. If a bespoke contract is used, it is best to have a clause that prescribes a dispute resolution mechanism as such mechanisms can lead to disputes being settled timeously and amicably.

• Claims procedure
The contract should provide for a procedure to be followed once a contractor or the employer realises that they have a claim. Submission for and against such a claim will usually be made. The contract will usually set out time periods for the contractor to give notice of a claim and to submit a claim. These must be identified, noted and complied with by the contractor.

• Determination
The submissions referred to above are usually made to the representative of the employer. This individual will determine if indeed a claim exists and if so, the amount claimable.
• **Dispute**
  If either party is not satisfied with the determination made, they can declare a dispute or notify their dissatisfaction and, depending on the provisions of the contract, either: try to mediate the dispute; approach a DAB/ arbitration; approach the court or follow any other mechanism set out by the contract.

• **DAB/ Arbitration**
  In employing this mechanism parties will usually negotiate and conclude an arbitration/ adjudication agreement which will state the exact procedure to be followed in arbitrating/ adjudicating the dispute. An arbitrator(s)/ adjudicator(s) will be agreed upon, and dates for submissions and argument, issues relating to costs, and all other logistical issues will be agreed in a meeting with the arbitrator(s)/ adjudicator(s). This agreement will then be followed until a decision is made by the arbitrator(s)/ adjudicator(s). It is important to note that the ruling of an arbitrator/ adjudicator is binding on the parties and can be made an order of the court. If it is agreed that the award by an arbitrator or adjudicator is final and binding, a court will, save in the most exceptional cases, not overturn the award.

• **Court**
  If no provision is made for arbitration in the contract, and the parties do not agree to this or any other mechanism to resolve the dispute, the normal South African court system may be followed to settle the dispute.

Contractors should ensure that after the award of a tender the agreement tendered for is the agreement that they sign.

Contractors should note that they may ask for the relaxation of certain strict or unfair terms of the contract, but they must ensure that this does not render them disqualified, and they must voice this concern in the prescribed format (usually tender specific).

Although arbitration offers a quicker, controlled and much more discreet solution to disputes, it is not always the cheapest solution.
Key concepts

**CONTRACT DELIVERABLE**

- The deliverable in a construction contract is the completed works (the completed building, structure). The completed works should be described as correctly and clearly as possible at the time of contract, and to allow it to evolve in a controlled manner (deliverable);

- To define the completion date of the deliverable based on what is known and what ought to be reasonably foreseeable by an experienced contractor at the time, and to allow the completion date to change in a controlled manner by providing for circumstances where the completion date can be extended.

**CONTRACT PRICE**

- There are various pricing options to consider, for example:

  - Lump sum contract
  - Unit price contract/ remeasurable contract
  - Fixed price

Please see the section dealing with contract arrangements on page 12.

**CONTRACT RISK**

To respectively allocate the foreseeable and unforeseeable/ likely and unlikely risks to each of the parties.

**CONTRACT TERMS**

The following terms are key and regularly used in construction contracts. It is therefore very important that contractors know and understand what they mean:

- **BOQ:** This is a detailed statement of the work, materials, prices, dimensions and other details for the construction of the work. This document will be used in remeasurable contracts.

- **Contractor:** The person or firm who signs the contract to do the work.

- **Defect:** Defects are aspects of the works that are not in accordance with the contract. They usually occur because of design deficiencies, material deficiencies, specification problems or workmanship deficiencies.

- **Defects liability period:** The period for which the contractor is required to “guarantee” the completed works and to rectify any defects that may be discovered or appear.
The defect liability period starts when the employer is satisfied that the works are complete and takes delivery. The defects liability period varies, depending on the nature of the work, and can range from three to 12 months.

- **Deviation:** When a plan, design or specifications agreed by the parties is not followed during the construction process.

- **Disputes:** In general, a dispute is defined as an unresolved matter of dissatisfaction or difference.

- **Employer:** Also known as the client, the employer may be a person or a government agency or a corporation, and is the party who wants the project constructed and who will pay for the work. The employer also signs the contract.

- **Employer’s representative:** A representative of the employer, usually a professional architect, engineer, project manager or quantity surveyor. This is the person with whom the contractor will have the greatest contact during the contract.

- **Escalation clauses:** Caters for the rise and fall of economic factors, where a project/contract exceeds a duration of one year, eg labour rates, commodity prices, etc.

- **Extension of time (EOT):** An extended time for completion of the works, relieving the contractor from having to pay penalties for the delay.

- **Force majeure:** An exceptional event or circumstance beyond a party’s control that renders performance of the works impossible for a period of time or forever (eg war, terrorism, etc).

- **Performance guarantee:** A guarantee procured by the contractor from a financial institution in favour of the employer as security for the due performance of the contractor’s obligations under the contract. The employer can claim against this security should the contractor fail to perform the obligations for which the security has been given. The security is returned when the contract is satisfactorily completed. The terms of the guarantee will determine the nature thereof, and the instances in which it can be called, and must for that reason be read very carefully.
- **Payment guarantee:** A guarantee procured by the employer from a financial institution in favour of the contractor as security for the employer’s compliance with its payment obligations under the contract. The contractor can claim against the guarantee where the employer has failed to make due payment to the contractor in terms of the contract. This security is returned when the employer’s payment obligations have been fulfilled. The terms of the guarantee will determine the nature thereof, and the instances in which it can be called, and must for that reason be read very carefully.

- **Limitation of liability:** This is usually a clause in the contract which apportions liability between the parties. It is an attempt to limit, define, estimate and manage liability between the parties themselves and third parties. A cap on damages may be used.

- **Overhead costs:** Costs incurred by the contractor in establishing and maintaining site.

- **Penalties:** Most contracts contain a penalty for failure to complete the project within the contracted period or a failure to achieve certain guaranteed levels of performance of the works. Penalties are an agreed upon amount of money which is deemed to cover the innocent party’s loss in respect of the breach for which the penalty is imposed. In agreeing a penalty, it should be considered whether the penalty proposed bears some measure of potential harm to the innocent party and the innocent party should be made to explain the amount proposed, if it is proposed.

- **Pricing options:** Options available to a contract when pricing a particular contractor (eg lump sum, measurable, activity based, time-based etc).

- **Retention:** This is money, usually from 5% to 10% of the value of the work done, that is held back by the employer to correct defective work. When the project is delivered to the employer, part of the retention money is returned to the contractor, and the balance is released at the end of the defects liability period.

- **Subcontractor:** Usually appointed, managed and paid by the contractor; enters into a contract with the contractor.
- **Variation:** Any change to the contract which is instructed or approved. Most standard form contracts provide for a procedure to be followed when such a change is required.
Applicable legislation

**THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD ACT 38 OF 2000**

This Act regulates the construction industry as a whole and publishes standards, directives and regulations to give effect to this objective. If a contractor intends to tender for public sector works, regard should be had to this Act and regulations, in particular, the requirements for registration.

**THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF 1993**

This Act prescribes standards and requirements according to which the contractor’s employees and/or all individuals on site are to be treated. The construction regulations (the latest published in 2014) under this Act prescribe the requirements to ensure health and safety in construction activities.

**NATIONAL ENVIRONMENTAL MANAGEMENT ACT 107 OF 1998**

This Act provides the requirements and procedures necessary where the construction of any works pose a risk to the environment.

**NATIONAL BUILDING REGULATIONS AND BUILDING STANDARDS ACT 103 OF 1977**

This Act prescribes the standards and requirements to which any building to be used for occupational purposes should comply.

**THE CONSUMER PROTECTION ACT 68 OF 2008**

This Act protects “consumers” when entering into contracts with contractors.

**THE COMPETITION ACT 89 OF 1998**

This Act protects employers against collusion during the tender phase of the contract.

**MUNICIPALITY BY-LAWS**

These are by-laws promulgated by the municipality regarding buildings.
Useful links

- Association of Arbitrators (Southern Africa)
  www.arbitrators.co.za

- Department of Trade and Industry
  www.thedti.gov.za

- Tokiso Dispute Settlement (Pty) Ltd
  www.tokiso.com

- Arbitration Foundation of South Africa (AFSA)
  www.arbitration.co.za

- United Nations Commission on International Trade Law (UNCITRAL)
  www.uncitral.org

- International Chamber of Commerce (ICC)
  www.iccwbo.org

- London Court of International Arbitration (LCIA)
  www.lcia.org

- Construction Industry Development Board
  www.cidb.co.za

- Council for the Built Environment
  www.cbe.org.za

- South Africa Federation of Civil Engineering Contractors
  www.safcec.org.za
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