

# Delayed, non-payment of subcontractors contributing to construction industry crash

As delayed or non-payment of subcontractors by main contractors occurs more frequently within the South African construction industry, subcontractors are faced with the dilemma of either accepting work on onerous terms and risking late or non-payment or closing their doors. Subcontractors are finding that trading under these conditions is no longer viable.



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Whilst unpacking some of the issues behind late or non-payment at a recent workshop held by the Master Builders' Association Western Cape regarding the challenges and risks that this is posing to subcontractors, it was noted that some main contractors are making changes to the standard contract agreements used. These included, amongst others, the 2018 6.2 JBCC Nominated/Selected Sub-Contract Agreement and the current Master Builders South Africa, (MBSA), Domestic Sub-Contract Agreement. These changes serve to unfairly shift the balance of contracting risk and adversely affect the subcontractors' contractual rights. Subcontractors are accepting this practice simply because they are desperate to ensure continuity of work for their employees.

In warning the different participants who sign these altered agreements, executive director of the MBAWC Allen Bodill reminded those present at the workshop that it is ultimately up to every main and subcontracting entity to carefully assess their own commercial and enterprise risks and weigh these against the possible rewards when deciding whether accepting work in terms of these altered contract conditions is acceptable or not.

## Understand contractual obligations, rights

A subcontractor at the workshop shared that one of the reasons why they accept such contracts is because they do not understand them. Too many subcontractors are going into business rescue because they are working at rock-bottom prices and accepting risks that they don't understand. To address this, the MBAWC has offered to provide workshops to help subcontractors better understand their contractual obligations and rights, as enshrined in the standard contract documentation. The Contractual and Legal Committees at MBAWC and MBSA are also currently reviewing all current MBSA contract documentation and making appropriate changes wherever necessary.

In addition, workshops will be held to educate subcontractors on their contractual rights and the steps that they should take in the event of non-payment. “We will be drawing on our collective wisdom and inviting those who have practical experience with these matters to share their knowledge. It is this type of collaboration that can contribute to keeping our members in business during these tough economic times,” stated Bodill.

A large main contractor who was present at the event shared that main contractors in 2019 are finding themselves in as risky a position as their independent subcontractors. “All of us are dealing with massive business risks and we all try to transfer the risk onto each other – the client transfers risk to the main contractor, who transfers this to subcontractors, who then try and pass this on to suppliers. This is causing divisiveness in our industry and it cannot continue.”

## **Main contractors, subcontractors forum**

It was suggested that a forum for main contractors and subcontractors be created where they could not only hash out the issues that plague their relationship, but also redefine their contracting arrangements and unite against the status quo. MBAWC will be facilitating this forum in the near future. “Subcontractors and main contractors must collectively fight back on the altered contractual terms and conditions that are being forced upon them,” said Bodill.

He added that if subcontractors and main contractors build better relationships of trust with each other, it can only be to their mutual advantage. Should contractual disputes arise, the MBAWC will continue to attempt to constructively intervene at the request of any of its members with the aim of conciliating the matter to the mutual benefit and satisfaction of both main and subcontracting parties.

“We all need to work together, to uphold the rights that are enshrined in the standard contractual documentation in order to save both main contractors as well as subcontractors from the adversarial and costly consequences that all too frequently result from such trading arrangements,” concluded Bodill.

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