

Anticompetitive behaviour, fraud and corruption in the construction industry.

Fraud and Corruption in the Construction Industry

The cidb is a schedule 3A public entity established by an Act of Parliament, Act 38 of 2000. It has a specific mandate of providing an enabling environment to, and regulating, the construction industry.

The cidb has adopted a zero tolerance policy on fraud and corruption.

The cidb has established the Standard for Uniformity (SfU) and the Code of Conduct as prescripts which must be complied with. These prescripts form the basis for instituting disciplinary procedures and sanctions against clients and contractors found to have transgressed the cidb requirements. The cidb uses these prescripts as a basis for formulating charges for those who are the subject of investigations and disciplinary procedures.

Many contractors have been subjected to cidb disciplinary procedures over the last few years. In the last financial year 29 construction companies have been investigated with a 100% conviction rate, and have imposed fines and or suspensions as appropriate. Most transgressions are one or a combination of: misrepresentation / fraudulent submission to cidb of Tax Clearance Certificate, financial statements, track record; corrupt payment to cidb employees; fraudulent cidb certificates; unauthorised use of cidb logo and others. The cidb has also disciplined contractors that misrepresented themselves to clients by submitting fraudulent documents during the tendering stage.

In addition, a number of cidb employees have been subjected to internal disciplinary procedures and have been dismissed for having solicited or accepted bribes from contractors. Furthermore, the cidb has also laid charges against these employees with the South African Police Services (SAPS).

It is the cidb's belief that all forms of corruption need to be understood and addressed.

The cidb has recently published a report "Construction Quality in South Africa; A Client Perspective", which has identified fraud and corruption as one of the major barriers to construction quality, and has recommended specific actions to be instituted by the cidb. Furthermore, in an effort to promote the fight against fraud and corruption in the construction industry, the cidb is developing and implementing transparency and integrity management systems in construction procurement, and is exploring the opportunity to participate in an international multi-stakeholder initiative, "Construction Sector Transparency Initiative" (CoST), which is designed to promote

transparency and accountability in the construction industry.

Anticompetitive Behaviour and the Competition Commission

Collusion is one of the most sophisticated forms of corruption in the construction industry, and the Competition Commission has been investigating construction companies for anticompetitive behaviour for some time. The Commission has recently released a media statement in which it announced that it had uncovered widespread "anticompetitive conduct through various arrangements". The Commission has also called on companies in the construction industry to come forward and disclose completely and truthfully where they have participated in collusive conduct when tendering for projects in both the public and private sectors.

It needs to be emphasised and understood that investigating anticompetitive behaviour and sanctioning the guilty parties is the mandate of the Competition Commission. Through its mandate, the cidb compliments the Commission by considering the broad definition of corruption and taking appropriate action.

It is important to note that, in line with cidb Code of Conduct for all Parties Engaged in Construction Procurement, the cidb will review the findings of the Commission and consider appropriate actions.

Since the announcement of the fast track settlement process by the Commission, the cidb has noted the following developments:

- some companies have come forward to disclose what they have done that constitutes anticompetitive behaviour; and
- various organisations have conducted investigations to contextualise the extent of this anticompetitive behaviour

The findings still have to be made public for the cidb and other stakeholders to comment on the depth of this problem, and until information about these collusive activities has been made available, it will be difficult to deal with the elements that lead to these behaviours. The cidb commends those firms that have come forward and disclosed what they have done. All construction companies are encouraged to do the same. It is only through such positive attitude that we can all understand the extent of the problem and devise responsive solutions and also prepare the industry for a future with mitigated exposure to these problems.

The cidb is cooperating with the Commission, and is providing the Commission with access to information that the cidb has on details of

public sector procurement. We will continue to work with the Commission to ensure that the extent of this collusive behaviour is understood and addressed. The collusive conduct of construction companies on projects affects infrastructure delivery in numerous ways. In the case of the public sector, it is noted that the anticompetitive conduct, bid rigging or collusive behaviour undermines the public tendering system, leads to artificially inflated prices and shrinks the total available budget for a number of projects. Such practices further reduce the opportunity to deliver other projects.

Concluding Comments

The cidb is committed to rooting out all forms of fraud and corruption, including anticompetitive behaviour in the construction industry. In this regard the cidb welcomes the steps taken by the Commission in investigating companies alleged to have participated in this corrupt behaviour and calls on all companies involved to come forward to disclose any anticompetitive behaviour.

In line with the cidb's policy on fraud and corruption, the cidb will review the findings of the Commission and consider appropriate actions.

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