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We are half way through 2015. It is a perfect time to review plans, past and future, and to re-adjust as we approach the second half of 2015 and the looming year end.

Looking at milestones, the cidb called for the nomination of members to the National Stakeholder Forum, early in the year. The response has been encouraging. We thank the many stakeholders who have answered the call to serve and to contribute their time, knowledge, experience and expertise to further the aims of construction industry development. The Forum will convene its first meeting in the latter part of 2015.

The month of June is always a reminder to all sectors of the country’s economy particularly construction, that we need to increase our efforts to support skills development and entrepreneurship among the young. The youth need more opportunities for business and for employment if their potential is to be realized and their capacity to contribute to economic and social development harnessed.

In this issue of Concrete we look at the proposed amendments to the cidb regulations, to tackle the thorny issue of late payments to contractors.

The cidb has taken the first steps to call to account, all the companies that are responsible for collusion in the construction industry. It has issued charges to the 15 companies who disclosed their involvement in collusive practices to the Competition Commission.

We also look at export promotion to expand opportunities for SA contractors in Africa.

Look out for this newsletter in the new and improved cidb website, which will be launched in the coming months. We will continue to send you our valued stakeholders, notice of news on the website to keep you updated on important developments in the cidb as well as in the industry.

Enjoy this edition.
Inba Thumbiran, the Programme Manager responsible for Delivery and Procurement Management has hit the ground running since ascending to the hot seat as the Acting cidb CEO on 1 March 2015.

Inba’s tenure as Acting CEO came into effect as the cidb prepared to lodge charges against the 15 construction companies that admitted to collusion to the Competition Commission. In a media statement issued in April 2015, the cidb announced that the charges against the 15 companies is only phase 1 of the process to bring to book, all the companies that have been implicated in the collusion saga. The next phase is to look at those companies that have not accepted guilt to the Commission.

Thumbiran took the reigns as Acting CEO following the departure of former CEO Mzwandile Sokupa in February 2015.

The draft regulations to deal with payment delays to service providers by public sector clients were published on 29 May 2015. Delayed payment is a perennial problem that has not only dogged businesses in the construction industry for years. It is sadly, a reality for many industries. It is a cause of ruin for small businesses. The Regulations are out for public comment and once written to law, will empower contractors to charge automatic interest to clients on payments overdue.

With much more on her plate and the attendant challenges of the top job, Inba has certainly proved up to the task. A specialist in procurement and infrastructure delivery, Thumbiran boasts a track record of more than 20 years in the construction industry. She joined the cidb as Programme Manager for Procurement and Delivery Management in 2007. In July 2012 Minister of Public Works, Thulas Nxesi seconded her to serve on his Ministerial Task Team responsible for designing and implementing the Department’s turnaround strategy.

The companies are charged in terms of the Construction Industry Development Regulations of 2004 as amended and the cidb Code of Conduct.

At the time of issuing the charges the cidb announced that it will hold formal hearings against the 15 companies in April 2015. Following the court application by six of the 15 companies to have the cidb regulations set aside, the cidb is holding over the hearings pending the court’s decision on the matter. The cidb has approached the court to request an expeditious enrolment of the challenge to its regulations.

Meanwhile three of the companies charged have also applied for a temporary interdict against the cidb to stop the cidb from proceeding with the formal inquiries pending the outcome of the review applications.

The cidb resolved to hold over the formal inquiries against all firms, including those that did not launch any court proceedings, so as to allow the court challenge to the regulations to be finalised.
South Africa is battling to keep the lights on and every effort to save energy counts. Energy security is a real challenge, a fact which President Jacob Zuma also shared with the World Economic Forum in Davos earlier this year. Our electricity infrastructure is simply not designed to serve all of the country’s needs and measures are required to do everything possible to preserve energy.

The National Energy Efficiency Strategy by the Department of Energy (DoE) seeks to address energy security and sets targets for all sectors of the economy, including public buildings, to reduce their energy consumption.

Key stakeholders have rallied behind the Department of Energy to support implementation of the strategy. These include the Department of Public Works, the cidb and other stakeholders who are working hand in hand with the DoE and have developed an Energy Performance Standard known as the SANS 1544 (2014). The Standard sets out procedures for measuring of future energy usage.

In addition, it is intended that buildings owned or leased by Government in occupancy classes covered by SANS 1544 will, in future be required to display Energy Performance Certificates. This requirement will become effective within two to three years of the relevant regulation or a policy directive becoming operational.

The cidb is also working with South African National Accreditation System (SANAS) to establish an accreditation system in line with SANS 1544. The system is expected to be completed by March 2016.

Together with the South African Bureau of Standards, the cidb has commissioned the development of learning materials for training courses. These will be used for accreditation and to issue Energy Performance Certificates. The plan is for learning materials to be available by August 2015.

It is expected that the issuing of Energy Performance Certificates will create work opportunities for around 200 assessors.

The Department of Public Works’ draft Green Building Policy also makes reference to Energy Performance Certificates.

There is currently no provision for private sector buildings to comply with Energy Performance Standards. However, Government is considering extending the requirement for private sector buildings to have an Energy Performance Certificate on change of ownership.

The implementation of the Energy Performance Standard is a very positive development as it compels public buildings to use energy more efficiently. It marks an important step towards achieving the global quest to have near zero energy buildings by 2030.
Minister Thulas Nxesi of Public Works has published for comments, draft regulations aimed at empowering construction businesses to fight delayed payments by clients. The Regulations are published in Government Gazette number 38822, Notice 482 of 29 May 2015.

Late payments continue to place small contractors in the construction industry at risk. This practice is threatening the very survival of small contractors who rely on their clients to pay them promptly in order to keep their businesses going.

Government recognises that delayed payment is a real threat not only to small business, but to the very social and economic objectives of the country. Lamenting the destructive effects of late payments on sustainability of entrepreneurship, President Jacob Zuma has in the past, said that “a key contribution to the development of small business by Government would be improving Government’s ability to pay suppliers on time, within the 30-day prescribed period.”

This view has been echoed by Minister of Public Works, Thulas Nxesi who also concurs that late payment is a problem. In his address to the cidb’s National Stakeholder Forum Minister Nxesi has said, of his Department, that Public Works has to reinvent itself as a better client and a model client to the construction industry.

“We cannot be happy with late payments,” he said, which threaten the lifeblood of small contractors in particular.

There are regulations in place to curb late payment. Section 38(1)(f) of the Public Finance Management Act (PFMA) requires accounting officers to settle all contractual obligations and pay all money owing, including intergovernmental claims, within the prescribed or agreed period. There is also National Treasury Regulation 8.23, which states: “Unless determined otherwise in a contract or other agreement, all payments due to creditors must be settled within 30 days from the receipt of invoice.”

Confronted with the dilemma to exercise their legal and contractual rights and the fear of losing future work opportunities, many contractors choose to ignore these rights. Emerging contractors can also not afford protracted legal battles to force clients to pay timeously. The 2014 cidb Construction Indicators Report reveals that clients pay 42% of contractors within 30 days of invoicing; 53% between 30-90 days, and 5% in 90 days or more.

The cidb believes additional regulations and punitive measures are necessary to put an end to late payments. The Minister of Public Works has published proposed amendments to the Construction Industry Development Regulations of 2004 to empower the industry and contractors to better deal with delayed payments by construction clients. Among others, the proposed regulations amendments will better define and strengthen the process of adjudication to resolve late payments.

Proposed prompt payment measures

The cidb proposes the following measures under prompt payment:

• The prohibition of conditional payment in contracts
• Any person who has carried out any construction works, or supplied any goods or rendered any services is entitled to a progress payment

Emerging contractors can also not afford protracted legal battles to force clients to pay timeously. The 2014 cidb Construction Indicators Report reveals that clients pay 42% of contractors within 30 days of invoicing; 53% between 30-90 days, and 5% in 90 days or more.
Where an invoice is not paid within a period of 30 days, the client or employer must pay the service provider or supplier interest at the Repurchase (Repo) rate plus 6%.

Clients may not withhold payment or part payment, unless they have given notice of their intention to do so.

Where payment due under a contract is not paid in full by the date for payment and no effective notice to withhold payment has been given, the person to whom payment is due has the right (without prejudice to any other given right or remedy) to suspend performance of his or her obligations under that contract.

The cidb’s proposal that late payments automatically attract a Repo-rate plus 6% interest is a ‘game-changer’. In the past, clients have managed to get away with paying contractors late without any consequences. This will change if Minister Nxesi approves the provision to charge automatic interest. The accounting officer will have to declare the interest paid in their financial statements.

Section 1 of the PFMA defines fruitless and wasteful expenditure as “expenditure which was made in vain and would have been avoided had reasonable care been exercised.” Interest payments incurred for late payment constitutes fruitless and wasteful expenditure. If there is any evidence of fruitless and wasteful expenditure, the Auditor-General issues a qualified audit report finding.

The cidb’s prompt payment proposals apply to work undertaken by private sector and public sector clients. In terms of Housing Consumer Protection Measures Act, 1998 (Act 95 of 1998), home building contracts have been excluded from the prompt payment proposals.

Proposed adjudication measures

The cidb has identified Model Adjudication Procedures, published by the Construction Industry Council of the United Kingdom of Britain (5th edition) as best practice, and has adapted these procedures for South Africa.

The following measures are proposed with regards to adjudication, that:

- Every contract must provide for an adjudication procedure
- A party to a contract may refer a dispute arising from the contract for adjudication - disputes may relate to a technical or legal matter, an invoice or a tax invoice.

A contract must have an adjudication procedure, enabling either party to give notice of adjudication

A contract must provide a timetable with the object of securing the appointment of an adjudicator and referral of the dispute to him or her within 7 days of the notice of adjudication

The adjudicator must reach a decision within 28 days from the date of referral

Adjudication is a tried and tested, cost-effective and speedy way to resolve disputes. This practice is well-entrenched internationally. The cidb hopes adjudication will reduce the number of disputes referred for arbitration, or taken to court. However, if either party is dissatisfied with an adjudicator’s decision, they may refer the dispute for arbitration, or take the dispute to court.

Minister Nxesi is currently reviewing the cidb’s proposed amendments to cidb regulations.
cidb Supports Exporting South African Construction Services to Africa

As large contractors expand into Africa and international markets for growth opportunities, the cidb has conducted a study into the feasibility of exporting contracting service to Africa, to improve the state of transformation of the SA construction industry.

At an industry breakfast in May 2015, the cidb stated that South African contractors are well positioned to contribute to development of infrastructure in Africa, which is estimated to have a backlog of $90 billion per annum. Among the key advantages that SA contractors have to expand into the continent, the cidb points to competitive tendering opportunities, the opportunity for SA contractors to go into public private partnerships as well as concessions to pool the requisite resources to deliver infrastructure. Currently expansion into Africa and internationally has mostly been explored by large contractors. But can the model work for smaller contractors?

Industry recommendation is to facilitate the establishment of an ‘export council’ that would be recognised by the dti. One model would be to tap further into the resources, experience and expertise of the Built Environment Professions Export Council (BEPEC) which is already conducting studies on export markets in Africa, to consolidate the local industry’s understanding of these markets, with a specific focus on infrastructure development.

Stakeholders agreed that the cidb must establish a task team that includes industry associations and State Owned Enterprises (SOEs), to create a framework for encouraging local construction companies to enter Africa’s developing markets and to seek further growth through the proposed export council.

Speaking at the cidb industry breakfast in May, the Deputy Chairperson of the cidb Board, Chris Jiyane said that transformation within the South African construction industry is slow but key, and the industry needs to work together to move South Africa forward. Jiyane also criticized fraud and corruption, stating that entertaining and practising these acts is a non-sustainable way of progressing in business and we all have a responsibility to help fight this problem.
Construction to align to revised dti Codes of Good Practice by June 2015

The construction industry has until the end of October 2015 to get its Codes of Good Practice aligned to the revised general Broad Based Black Economic Empowerment (B-BBEE) Codes of Good Practice published by the dti.

The Department of Trade and Industry (dti) has given sector charters until the end of October 2015 to align their Codes of Good Practice to the revised codes.

Consideration will be made to repeal sector codes that are not aligned and ready by October 2015, the dti has said. The construction sector is one of nine economic sectors, which have developed their own B-BBEE Codes.

The general Codes of Good Practice came into effect on 1 May 2015, following a one year transitional period. Sector codes will on the other hand, come into effect on 1 November 2015. The revised codes comprise of 5, instead of the initial 7 key elements. These are ownership, management control, skills development, enterprise and supplier development and socio-economic development.

The revision of codes came as a result of dti’s disappointment with progress achieved towards Broad Based Black Economic Empowerment (B-BBEE) and the desire to accelerate change.

The Construction Sector Charter Council (CSCC) is driving the alignment process in the construction sector while the Department of Public Works is the facilitator for the alignment negotiations. The CSCC has been engaging with industry associations, who are signatories to the 2009 construction sector codes since August 2014. Industry organisations represent established and emerging constituencies from contractors and professionals.

All parties involved in the negotiations have undertaken to finalise the draft Construction Charter, and make it available for public gazette by June 2015.
Delivering new infrastructure is a priority focus of Government and one of the main drivers of SA’s economy since 1994. Equally important is the need to also bring maintenance of existing infrastructure on par with other top Government priorities. Not enough focus has been paid to maintaining existing infrastructure and the country is beginning to pay the price for that in the form of potholes, unstable electricity infrastructure, sewerage plants that pose serious health hazards and poor water treatment.

Research points to huge disparities in municipalities’ ability to maintain infrastructure. “Municipalities range from those facing up to the challenges of maintaining infrastructure in a transformational environment, to “those that appear to be unable to even make the attempt, because of inadequate resources, or simply lack of will”, according to a cidb CSIR 2007 report, “Towards a framework for the maintenance of municipal infrastructure in South Africa and its operation and maintenance; an overview”. The report also provides guidance to Government departments on infrastructure maintenance.

Government is very aware of the fact that many low capacity municipalities, and provincial and local authorities have failed to maintain existing infrastructure, and are struggling to deliver basic services, as a result. Seeking a solution, Government approved the development of a National Infrastructure Maintenance Strategy (NIMS) in 2006, and launched NIMS two years later.

The Department of Public Works is responsible for leading the implementation of NIMS. The cidb is responsible for overall programme management. The parties have signed a Memorandum of Agreement committing the cidb to developing a Project Execution Plan for NIMS. The cidb has completed this massive undertaking.

The plan has seven components namely:

- Programme Management (Overall management of the implementation of the Project Execution Plan)
- Maintenance Management Standard (Develop and publish a standard/guidelines for a maintenance management framework in line with legislation, set out roles and responsibilities, systems requirements and align to the cidb’s Infrastructure Management toolkit)
- Maintenance Planning Guideline (Develop and publish a guideline on maintenance planning aligned to the pertinent legislation and package these and align to the cidb infrastructure Management Toolkit)
- Maintenance Accounting Framework (Develop and publish guidelines for maintenance accounting in line with pertinent frameworks, for incorporation into the cidb’s Infrastructure Management Toolkit)
- Maintenance Competency Profiles (Develop and publish competence profiles for the maintenance functions within specified categories)

NIMS will empower Public Works departments. They now have the tools and processes, which will enable them to move away from undertaking ad hoc, reactive maintenance, to a proactive, more sustainable, approach.
A healthy construction industry that strives for best practice needs a healthy academic and research infrastructure. Academic research is the instrument that sharpens the minds and ideas of tomorrow’s industry thought leaders for the future growth, sustainability and development of the construction sector.

The cidb hosts biennial Doctoral Research workshops in partnership with academic institutions, and this year the 3rd Doctoral Workshop was held in February 2015 in partnership with the University of Cape Town.

The Doctoral Workshop creates a unique opportunity for doctoral students to “bounce-off” research ideas with academics and supervisors from various institutions and industry professionals. It also enables supervisors to improve their supervisory skills, by interacting with academics from other universities.

The 2015 workshop brought together academics and doctoral students from the schools of Construction Economics and Management from the University of Cape Town, University of the Witwatersrand, University of Johannesburg, Central University of Technology and the Cape Peninsula University of Technology.

Its two broad objectives were firstly, to create a unique environment where doctoral students can...
present their research proposals to academics and peers from four Schools of Construction Economics and Management in South Africa, and secondly, to build capacity among supervisors.

The cidb also supports Post Graduate Conferences which are held every alternate year in partnership with various universities on a rotational basis.

The value of the 2015 Doctoral Workshop was aptly described by Dr. Abimbola Windapo, of Cape Town University, Department of Construction Economics and Management, when he said that it provided a good avenue for doctoral students to bounce-off their research ideas on scholars, who provided valuable contributions, constructive criticisms and therefore through that experience, were able to adapt a range of ideas to help frame their research in the right perspective. The Doctoral Workshop, he said, also provided students with an insight into ongoing research in construction at other South African universities, revealing possible areas for future collaboration.

Professor Dave Root, Head of School of Construction Economics and Management at the University of the Witwatersrand shares this view. Doctoral students, he asserts, “are essentially apprentice researchers. The workshop provides an opportunity for them to build networks and compare their work against others”. In South Africa, doctoral students often work in isolation. There are often very few peers they can interact with who work in the built environment, so they can become very dependent on their supervisors for feedback. Initiatives such as the forum, allows them to get other views on their work, and see how their peers compare. Ultimately, students have to develop their own value judgements around what is good quality in their research, and to respond to a multiplicity of views. The workshop assists in this”, he says. “We are certainly keen to push our students out of the home universities and get them to interact and expose their work to scrutiny, and the forum provides a space for this to happen. Ideas can be tested and refined, and relationships built”, he concluded.

Xebiso Kamudyaniva and Sylvia Hammond are two of the students who participated in the 2015 Doctoral Workshop. Says Kamudyaniva: “The Workshop helped me get a different perspective about my work. Since my research is supposed to benefit the industry, it helped give me realistic views about how industry players perceive what I am doing and the possible successes and pitfalls of what I intend to do. The process of having to present in front of members of the industry helped build my confidence for the times I will have to present my work to peers at conferences. In essence, it was an experience that also helped me to prepare for my proposal defence and the type of questions I could expect concerning my work.”

Hammond describes pursuing a PhD as “a rather lonely existence”. Appreciating the feedback, Hammond says that she “enjoyed the opportunity to field questions and observe the responses” to her replies. “I noted various points for inclusion in my thesis. “I believe that the Doctoral Workshop concept is well received. The opportunity to participate and hopefully for some, if not all participants to achieve the doctorate and become supervisors will have a compounding beneficial effect.”

The workshop was also an enriching experience for supervisors. “Supervisors also benefit from seeing what others are doing. South Africa compared to other middle-income countries such as Malaysia, Brazil and India, has relatively few doctoral students in part because we have relatively few academics with PhDs to supervise them. In most cases acquiring a PhD does not mean that a student has learnt how to supervise others. It only means that the student has learnt how to be supervised. The value of supervision as a skill set is often ignored.” Hammond posited.

Root takes the point further to say that South Africa does not have the luxury of slowly training supervisors through mentorship by more senior staff. “There are pressures for academics to supervise as soon as possible. This is especially the case in historically disadvantaged institutions that have not had a tradition of supervising PhDs in research. Whilst institutional support can assist in terms of training, at the level of engagement in the construction research context, supervisors need to interact with one another and see what their peers are up to,” he explains.

Dr Windapo adds that the process gave supervisors an opportunity to see their doctoral student’s research through the eyes of other scholars in the same field. “Areas omitted in the research, or which could be enhanced and resources from which students could obtain additional information which were formerly unknown to the supervisor were made evident by colleagues. The workshop also provided supervisors with an opportunity to network with peers from other South African universities and knowledge of other areas of research being undertaken by other scholars in South African universities”, he concluded.