

# MDA CONSULTING



## FIRST AID FOR CONTRACTS

Prevention is Cheaper than Cure

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### **GCC: INTIMIDATION AND VIOLENCE ON SITE – IT'S A RISKY BUSINESS!**

#### **Introduction**

In recent times there have been reports of numerous incidents of striking on site mixed with intimidation and violence. This is a reality that is becoming all too familiar in the South African construction industry.

Worse still is that these acts are not necessarily limited to disgruntled construction workers and employees on site, sometimes it is the surrounding community where the work is to be performed who incite violence and disrupt site activities.

The reasons for this discontent can vary but the consequence of this is often the threat of danger and possible loss of life to the workers and employees of the Contractor as well as the Employer's other agents working on site.

#### **WHO ASSUMES THE RISK?**

When things turn violent, who assumes the risk of guarding against such acts of intimidation and violence on site?

On the face of it and if it is the employees of the Contractor who perpetrate acts of violence, then generally this becomes a Contractor's risk. The situation is not as clear-cut where the perpetrators are disgruntled members of outlying community's.

If the Employer organization is a municipality within the Republic of South Africa<sup>1</sup> then it bears the responsibility for facilitating community participation<sup>2</sup>, and more importantly the development of an integrated development plan. In other words, the responsibility for managing the relationship between the surrounding communities in close proximity to the site and getting their willingness not to interfere with the construction activities, vests with the Employer.

In most instances this is not a once off discussion but it should continue until the works are completed.

It is clear who bears the risk of liaising with communities if the Employer is a municipality because of the Local Government: Municipal Systems Act 32 of 2000. This is not necessarily the case where the Employer is another entity. Accordingly the allocation of risk must be addressed in the applicable standard form contract.

Construction is indeed a risky business, but before accepting responsibility for the risk's associated with violence and intimidation ensure that the risk is yours to bear

<sup>1</sup>See Chapter 1 Interpretation of "municipality" of the Local Government: Municipal Systems Act 32 of 2000

<sup>2</sup>Section 16 (1)(a) of the Local Government: Municipal Systems Act 32 of 2000

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Turning now to look specifically at GCC 2010<sup>3</sup>, sub-clause 2.1.3 places an obligation on the Contractor to be deemed to have obtained all attainable information on risks, contingencies and all other circumstances, which may influence or affect the Works. It is arguable that what is envisioned in this clause is limited to the Contractor scrutinizing the technical data such as the geotechnical reports, drawings, site conditions and other documentation relevant to the execution of the works.

According to sub-clause 4.10, the Contractor's obligations in relation to his employees are limited to providing them with meals, accommodation, payment and transport (if agreed). With regards to the health and safety of his employees he is obliged to act in accordance with relevant legislation enacted to protect and preserve their health and safety.

With regards to the protection of the works, sub-clause 8.1.1 states that the Contractor's obligations are to arrange his operations so that they do not pose a danger, and cause the least possible inconvenience to the public and / or to vehicle and pedestrian traffic.

With regards insuring against certain risks, sub-clause 8.3.1.4 places an obligation on the Contractor to take out cover with the South African Special Risks Insurance Association (SASRIA). This type of cover guards against damage to property, business operations such as standing time or working expenses, goods in transit, vehicles and the actual construction work.

The Employer is obliged in terms of sub-clause 5.4.1 to give the Contractor right of access to the site and this obligation includes physical access to the extent stipulated in the site information. It could be argued that this obligation is not simply once-off, but continues for as long as the Contractor is required to execute the works on site.

Accordingly third party interference such as violence, intimidation or threats of physical harm from communities is a form of restricting the Contractor's ability to access the site. Both the obligation to give access to the site as well as to liaise with the community remains with the Employer.

## **CONCLUSION**

From the GCC 2010, it can be inferred that the Contractor's obligations to execute the works, insure and protect both the works and its employees cannot be extended to getting involved in maintaining order where third parties, not under its control, interfere with the proper execution of the works.

Surely if this was a risk contemplated by the Employer at tender stage and after having liaised with the relevant affected community's, then the Employer should have included specific reference of such risk in the tender documents so that the tenderers could price for the risk accordingly? How else is the Contractor expected to guard against a risk that is not in his contemplation and for which he would not ordinarily be aware?

Construction is indeed a risky business, but before accepting responsibility for the risk ensures that it is yours to bear.

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<sup>3</sup> General Conditions of Contract for Construction Works, 2nd edition, 2010

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