



SAACE – Client Information Sheet

INFORMATION SHEET No 3 in a Series CONSTRUCTION REGULATIONS 2003

STANDARD CONTRACTS AVAILABLE FROM THE SAACE

SAACE has a number of standard contracts that suit different situations. These are available from the Directorate.

- **SAACE Form of Agreement for Consulting Engineer Services (see note *)**
- **Trilogy of Documents (Guidelines for the Engagement of Consulting Engineers).**
- **FIDIC Guidelines for Selection of Consultants.**
- **FIDIC Client/Consultant Agreement**
- **FIDIC Short Form Agreement**

* Note: All equivalent CIDB documentation such as the CIDB Professional Services Contract (March 2004), are available from the CIDB directly.

FIND A CONSULTING ENGINEER

SAACE offers a service for clients looking for a suitable consulting engineer through its website or by phoning the office and discussing your needs with staff. A list of firms in your area who may be available to help can be provided.

WHAT IT MEANS TO USE AN SAACE CONSULTANT

SAACE members are firms managed by qualified professionals who undertake to abide by a code of ethics, and modern business practice to provide clients with quality service.

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Background

As of 18 July 2003, new legislation applies to all construction work within South Africa. The Occupational Health & Safety Act, 1993, now includes the Construction Regulations, 2003. These Regulations apply to anyone involved in construction work. They specifically set out duties that apply to the Client, the Contractor and the Designer.

In some instances, the duties of the parties are not changed much by the Regulations, but in other instances there are significant differences. In particular, the duties of the client have been crystallised and are now statutory duties, therefore they are enforceable by law.

The Regulations are a direct consequence of the excessive number of injuries and deaths on South African construction sites in the recent years. They are an effort to improve the safety of the worker on site by making the client, the contractor and the designer more responsible for health and safety. This is in contrast to the previous position where it was often only the concern of the contractor.

In this document we seek to alert clients to the existence of the Regulations and the liability it places on them. We will refer to various portions of the Regulation, but **this is not intended to be an exhaustive list of the client's duties and the Regulations must be consulted to ensure compliance.**

A copy of the Regulations can be found at www.acts.co.za. Go to the link entitled "Industrial, Health and Safety Acts", and select the Occupational Health and Safety Act. Click on the link to load the Act. Under the Regulation link, you will find the Construction Regulations.

Construction Work affected by the Regulations

Any construction work of which 50% or less was completed as at 18 July 2003 is subject to the Regulations and all the requirements of the Regulations must be met. It is safe to assume that the above mentioned Construction Work includes almost all structural work, most civil work, electrical and mechanical installations and some site investigations.

The Regulations place a legal responsibility on the client not only to comply with their requirements but also to ensure compliance by the contractor and other parties involved. Clients therefore should acquaint themselves with the contents of the Regulations and take the necessary measures to ensure compliance.

The Client's Duties

As set out above, this is not an exhaustive list, but merely an indication of what can be expected in the Regulations. Regulation 4 sets out the main responsibilities of the client. The client is inter alia required to provide the necessary health and safety specifications for the construction work along with the tender documents, thus ensuring that sufficient provision is made in the tender for the cost of Health and Safety. The client also has to appoint a principal contractor in writing.

In addition, the client must ensure compliance by the contractor with the health and safety plan drafted by the contractor in terms of the specification. The client is required to stop the contractor where work is not in accordance with the health and safety plan, or poses a threat to health and safety.

It is also important to note that the responsibilities of the owner of a structure do not end when construction ends. Regulation 9(4) specifically requires inspections of the structure by a competent person at specified intervals after completion.

The Appointment of an Agent

The client is entitled to appoint an agent, which the client is satisfied has the necessary competencies, to act as his representative. This appointment must be in writing and will result in the responsibilities of the client also applying to the agent, where reasonably practicable. This appointment will not absolve the client of his responsibilities, but rather will make the agent responsible for assisting the client in fulfilling his duties.

This is a significant responsibility for the agent, and whoever is appointed will have to be remunerated for accepting the appointment. One of the major consequences of the agent accepting the appointment is the non-insurability of some portions of the work under traditional professional indemnity insurance policies. As such, fines and penalties payable by the agent for transgressions of the Regulations will be for his own account. The agent must be compensated for this additional risk and the level of remuneration will have to be agreed between himself and the client.

Designer's Obligations

The Regulations require the designer of the work inter alia to carry out inspections during construction, thus ensuring compliance with the design and to stop any construction work that is not in accordance with the design. The designer also has other obligations. In the case of a structural engineer, for example, the designer is additionally required to provide the contractor with a geotechnical report (where appropriate) and to inform the contractor of the dangers posed by the construction work, the loading which the structure is designed to resist and any requirements regarding method and sequence of construction. The client should ensure that the appointment of the designer includes these obligations.