



Keeping you informed

INSIDE TRACK

July 2003

SAACE tackles empowerment

The South African Association of Consulting Engineers (SAACE) has appointed the CSIR (Boutek) to compile a transformation strategy for the consulting engineering sector, which encourages a more sustainable approach to empowerment and human resource development.

SAACE President, Dempsey Naidoo, says that the Association whole-heartedly supports government's BEE initiatives and believes that they should be broad-based and result in higher levels of ownership and operational responsibility. Furthermore, economic participation should be reflected in the broadening of the entrepreneurial base and increased participation in managerial, professional and other skilled occupations.

The introduction to government's document *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment* argues that South Africa needs an

economy that can meet the needs of all its citizens. It continues to say that this will only be possible if the economy is built upon the full potential of all persons and communities across the country. Government's vision is to achieve an adaptive economy characterised by growth, employment and equity by 2014 and it has outlined various broad economic strategies to transform the economy by the target date. It should come as no surprise therefore that the Department of Trade and Industry is leading the black economic empowerment (BEE) strategy.

The transformation strategy that is being prepared for the consulting engineering industry will take cognisance of prevailing realities. For example, at present there is a shortage of experienced black professionals or even new graduates from the tertiary institutions to meet the demands of the companies within SAACE. To respond meaningfully to requirements of clients in terms of

ownership, there are some companies, which resort to unacceptable practices, such as fronting and tokenism. This is unacceptable and contrary to the spirit of the legislation and the Association's approach to transformation.

Such a strategy could also form one of the building blocks of an overall empowerment charter for the construction industry, and would look at the status quo in terms of the existing demographic profile. It will also set targets for the future, taking into account the ability to educate and train professionals to meet the anticipated demands of the South African economy in terms of fixed investment.

SAACE's Transformation Committee Chairman, Abbas Jamie, says that the Association has embarked on this path because it supports empowerment and transformation of the sector. The Association and its affiliated companies have been transforming over the years and it is important to now reflect on the successes and



SAACE President, Dempsey Naidoo

failures, and collectively move forward with a clear strategy of what needs to happen in the consulting engineering environment. This will then feed into a broader construction sector strategy.

Furthermore, the strategy will have to respond to the ability of the consulting engineering sector to transform itself in accordance with ownership (shareholding), management participation, employment equity, procurement policy, skills development and corporate social investment.

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Message from Graham's desk



Consulting engineering industry more upbeat

The business mood in the consulting engineering sector continues to strengthen with the industry in general appearing to be more upbeat in its view of many of the major indicators including fee income, which demonstrated marginal growth in the last six months of 2002.

This emerged from the latest Management Information Survey (MIS) undertaken among members of the

South African Association of Consulting Engineers (SAACE) during the last six months of 2002.

The business mood, as measured by the business confidence index, has continued to strengthen for the seventh consecutive survey and is expected to remain above the 90% mark for the next 12 to 18 months, signalling an overall improvement in conditions.

Findings on fee income show that despite negative expectations in the previous survey, fee income earned ended marginally higher (up 0,5%). Compared with the last six months of 2001, nominal fee income rose 16,6% (or 3,2% after adjusting for inflation).

The survey found that government is playing an increasingly larger role in fee income earned by the industry with

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Empowerment

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Abbas says that the success of such a strategy depends on the buy-in of all decision and policy makers and therefore the key stakeholders – CIDB, public sector and private sector – form part of a team with the SAACE to drive the initiative. In addition, formal consultation will take place with the South African Federation of Civil Engineering Contractors (SAFCEC) and other built environment professional associations, such as the South African Black Technical and Allied Careers Organisation (SABTACO), who have been invited to participate.

A questionnaire has been sent to all member firms to establish benchmarks for use in the proposed scorecard to gauge success on the part of enterprises and sectors. Accurate benchmarks are also needed before realistic targets can be set for the membership of SAACE.

The SAACE hopes to ratify the strategy at its AGM on 16 October 2003.

New guideline fees

by Craig Clarke, Vice-President and Chairman of the SAACE Fees and Documents Committee

The new *Guideline Scope of Services and Tariff of Fees*, published by the Engineering Council of South Africa (ECSA) earlier this year, is a major milestone for our Association. For the first time, in terms of the Council for the Built Environment Act of 2000 and the Engineering Profession Act of 2000, the determination and annual review of guideline professional fees became the responsibility of ECSA rather than a government department.

In terms of the Act, ECSA is required to formulate the guidelines in consultation with all interested stakeholders, and the process has thus shifted from being prescriptive to one that is fully inclusive and consultative. ECSA gave all relevant stakeholders the opportunity to nominate

representatives to serve on its Fees Committee. Thereafter, the committee was formed comprising members of the ECSA Council, Department of Public Works, Department of Water Affairs and Forestry, National Roads Agency, Procsa, as well as service providers such as the South African Association of Consulting Engineers (SAACE) and the South African Black Technical and Allied Careers Organisation (SABTACO).

In April 2002, the Fees Committee tasked SAACE and SABTACO, with preparing the draft replacement document for the old Government Notice R1113, which had been in existence, with various amendments, since 1982. SAACE was also asked to produce a framework document to determine the principles for the

determination of professional fees, as well as the method to be used for the required annual review.

The Association is represented on the ECSA Fees Committee by Gert Basson, together with myself (Craig Clarke) and Executive Director, Graham Pirie. I drafted the framework while the mammoth task of producing the replacement R1113 landed on the shoulders of Gert, who has served SAACE for many years and done much sterling work for our Fees and Documents committee.

Various drafts were produced, reviewed and finally the long-awaited replacement for R1113 was published in Government Gazette No. 24938, Notice No. 18 and 19 of 28 February 2003.

The new document closely resembles the Association's Model Form of Agreement and is not fundamentally different from the old R1113, with the exception of subtle changes.

New friend of SAACE

At the Council Meeting on 14 May 2003, SAACE President, Dempsey Naidoo welcomed Duncan Leith (Commercial Manager) and Eugene van Aswegan (Regional Sales Manager) of Lafarge South Africa as the latest 'Friend' of SAACE.

Formerly known as Blue Circle Limited, Lafarge South Africa has been providing top quality products and services to the construction industry since 1914. It provides three-core product lines – cement, readymix and aggregates. The company prides itself on its quality and technical excellence, for example its technical laboratory has earned accreditation for all SABS EN tests for cement. Worldwide, Lafarge operates in more than 75 countries and employs 77 000 people.

From left: Duncan Leith, Dempsey Naidoo and Eugene van Aswegan.



Message from Graham

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funding by government now constituting over 62% of earnings in the industry, compared with an average of 56% in 2000. With the new Engineering Council of South Africa's (ECSA) fee scales gazetted on 28 February 2003, this should continue to improve.

The government, as evidenced by the budget and the President's State of the Nation Address, has confirmed its ongoing commitment to infrastructure investment in areas such as housing and municipal infrastructure, hospitals and clinics, schools, roads, water, electricity and government facilities. This bodes well for the industry and for

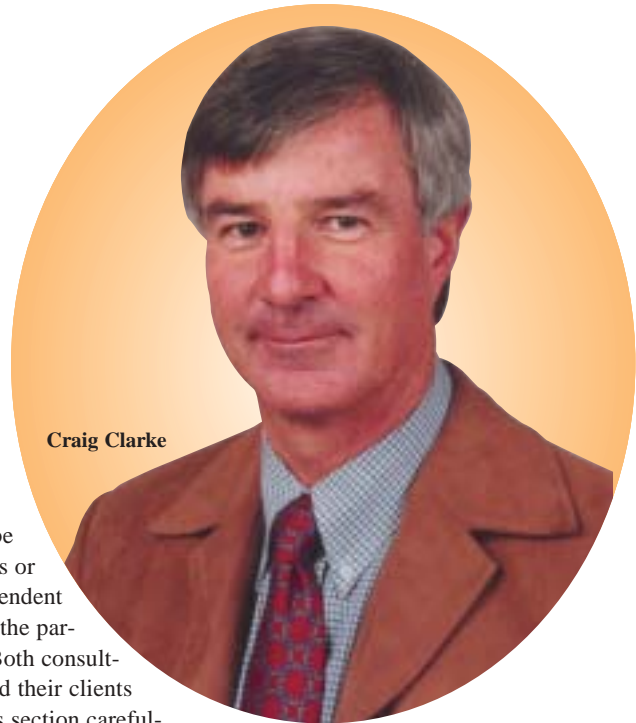
future increases in fee income.

The private sector, making up the remaining 37,7%, showed a drop of 1,45%. This could be because the prevailing high interest rates are negatively influencing spending by the private sector.

Total fee income earned outside of South Africa continues to increase and is estimated at well over R1,3-billion per annum. Mainly concentrated in the African countries, earnings as percentage of total fee income earned rose from 6% in 1998 to 15,2% on average for the year 2002. African exposure increased rapidly in the last survey, up from 11,7% in the previous survey (January to June 2002) to 18,7%.

The International Business

es explained



Craig Clarke

We recognise that the document is not perfect, but is a giant step forward and the first step in a process that will see the *Guideline Scope and Tariff* evolve over a period of time. In the interim, we have a guideline that is simple to apply and applicable to the whole range of services carried out by consulting engineers.

Ultimately, we should be aiming for a system that is far less regulated, and which sees fees being calculated on the value of the work being undertaken. This process will take time, and the new guideline seeks to set a standard based on current best practice. The percentage fees, together with the related category factors, take into account many different types of work and have been adjusted to ensure that the fee paid results in reasonable remuneration for the consulting engineer.

The most significant change has been the calculation of hourly

time based fee scales. The methodology is the same as that used by the Department of Public Service and Administration in their new *Guide on Hourly Fee Rates for Consultants* and links the hourly rate to specific salary scales in the Public Service. SAACE also assisted in the compilation of this document at the request of DPSA. The rates are therefore automatically self-adjusting, and should have universal acceptance by government, because the calculation is factually correct and demonstrable.

The hourly time based fees were kept simple by using a small number of easily identified and understandable categories of person. In future, ECSA needs to expand these categories to take experience, qualifications and specialisation into account, as well as the nature of the task being undertaken.

An important section in the

guideline deals with circumstances under which fees can be adjusted upwards or downwards, dependent on the nature of the particular project. Both consulting engineers and their clients should study this section carefully, because it provides guidance on factors that may indicate that the standard fee scales should be adjusted. Consulting engineers must learn that simply discounting their fees to a demanding client is a practice that increases risk, compromises quality, and will ultimately result in the demise of the profession. Fees must be calculated to be appropriate to the project.

Although only a guideline, the fact that it was produced in conjunction with most of the major government client departments, as well as private sector client

representation, should mean that the document has immediate and universal acceptance.

This is why it is so important that the new guideline fees are quickly accepted and adopted by public and private sector client bodies to ensure that the remuneration to the consulting engineer is commensurate with the value added to a project. In this way not only will the profession remain healthy and strong, but it will be able to meet the enormous challenge which lies ahead as the African renaissance gains momentum in the years ahead.

m's desk



Development Section, established in order to focus on achieving increased business opportunities for SAACE members as international service providers, although still in its infancy, is starting to make its presence felt. We expect its contribution to increase significantly.

Interestingly, non-payment or delayed payment (always an issue of concern) showed that 21% of the income earned from foreign clients, or R184-million was outstanding for more than 90-days.

Consequently, we requested the International Federation of Consulting Engineers (FIDIC) to table the issue of delayed payment of donor funds at its biennial meeting with the World Bank

and other lending institutions in June and are awaiting feedback. The CSIR has also advised us that they have a representative in Washington who can assist us in expediting payment to foreign governments from organisations such as the World Bank.

On black economic empowerment, it is interesting to note that despite a severe shortage of black engineers, the employment of black partners or directors rose 41% in the past 12 months, with black staff (incorporating all levels) accounting for 25% of total employment.

Despite the fact that less than 5% of professional engineers are black, our industry reflects a higher average – 6,6% of all partners and directors, 3,6% of all

associates and 6,2% of qualified engineers.

Bursaries granted by members rose to its highest level since June 2000. Focused mainly on recipients from a previously disadvantaged background, bursaries represented 0,9% of the total salary and wage bill.

Placing education and training under the microscope, internal and external training as a percentage of total gross salary was 4,1% in the second half of 2002 or R77-million, bringing the total expenditure by the industry towards upliftment of skills in the industry to R95-million. This amount does not take into account levies paid by members to the SETA.

In general, the latest survey was fairly positive. There are a number of pending concerns such as the continuing practice of clients at times sacrificing quality for price which causes long term damage to the industry and clients alike.

Measures to counteract this include suggesting to public sector clients that they only give approval for work to be done by SAACE member firms that are quality assured. These members are also required to have minimum levels of professional indemnity insurance, which provides protection to the client in the event of a malfunction. The industry as a whole will benefit by higher standards and realistic pricing.

Limiting your liability – useful hints

by Louis du Toit

During my short involvement with the South African Association of Consulting Engineers (SAACE), I have come across precious little good news regarding their exposures. Engineers have been much maligned and for various reasons have found themselves in very difficult contracting positions. A recent decision on appeal in the Orange Free State Provincial Division of the High Court gives engineers in South Africa an important tool to assist in uneven contracting positions.

I often hear from consulting engineers that a job is too small to warrant the signing of a professional services agreement, or that the client refuses to sign a formal professional services agreement. The problem with this is that as soon as there is any dispute between the parties, there is no contractual basis to use for the resolution of the dispute; where the accounts are not paid there is no formal time period agreed; and where claims are made against the engineer there is no limitation to that liability (it is worth noting that there is no parity between the size of the fee and the size of potential liability).

In this day and age, society is becoming increasingly litigious and the size of damages awards is increasing. A consulting engineer

carries a great responsibility to himself and the employees of his practice. It is therefore completely irresponsible to enter into a project without formalising a contractual relationship that limits the liability to within the levels of the practice's professional indemnity insurance. The most obvious solution is to ensure that a form of agreement is incorporated by reference in either the letter of acceptance or in the letter of appointment at the outset of a project.

In *B&B Eiendomme (Pty) Ltd versus Mostert van den Berg & de Leeuw* in the Orange Free State Provincial Division ('The Mimosa Mall case') the court accepted that the SAACE Standard Form of Agreement for professional services had been successfully included by reference to it in correspondence by the client. It is important to note that the reference was by the client and not by the consultant. The dispute resolution clause as set out in the SAACE Standard Form Agreement had been followed during an earlier dispute and this meant that the client could not deny knowledge of the incorporation of the agreement. The final result was that the limitation of liability as set out in the form of agreement, namely twice the professional fees, applied.

Before we assume that any reference to a form of agreement

in correspondence will be successful in incorporating the form of agreement, we need to look closely at one or two important points. Firstly, the most important element in any agreement is consensus. In this regard, it is essential that the engineer is able to prove that the client knew about the contents of the agreement and that this agreement would apply when he appointed the consulting engineer. Therein lies the key. If, when the client appoints the consulting engineer, it is unequivocally clear that he does so on the basis that the form of agreement will apply, then the chances are extremely good that a court will find such an agreement to be applicable. This then shows that consensus existed between the parties as to the terms of the relationship between them.

Some other important pointers:

- The reference to the form of agreement must be properly worded and it must be shown that the client received the letter before appointing the consultant
- The letter should state which version of which agreement is being incorporated
- The consultant should offer the client a copy of the agreement if he does not have one. At the very least, he should inform the client that he assumes the client is aware of the contents of the form of agreement, but that a

copy is available should he require one

- The limitation of liability clauses must be brought to the client's attention. There is substantial legal precedent to show that onerous clauses in standard forms of agreement need to be brought to the parties' attention
- In essence, your letter of appointment needs to make it clear that if you are appointed, it will only be in terms of the standard form of agreement, in other words it must be unequivocal.

In conclusion, a consulting engineer should never work without a professional services agreement being in place, which limits liability. The first prize is that the parties sit down and sign an actual form of agreement, however if this is not possible or not viable, then the form of agreement should be included by reference as mentioned above.

For members of the SAACE Professional Indemnity Scheme, legal risk management services are available as part of the service from Glenrand MIB and I can be contacted to assist in the wording of paragraphs in this regard.

** Louis du Toit is a director of Glenrand MIB Legal Risk Consultants, a division of Glenrand MIB Limited.*

SAACE is proudly South African

The Association is pleased to announce its membership to the Proudly South African campaign, which promotes South African products and services, helping to create jobs and economic growth in our country.

Becoming a member of 'Proudly South African' ties in and reinforces SAACE President, Dempsey Naidoo's theme of 'Take back your pride', which promotes pride in the South African consulting engineering industry.

The campaign is

supported by organised labour and business as well as government and community organisations. Proudly South African is the way for every South African to do something concrete to support job creation.



At the heart of the campaign is the Proudly South African logo.

Companies which meet the standards set by Proudly South African, can use the logo to identify themselves, their products and services.

The criteria which must be met

before the logo can be used are:

- The company's products or services must incur at least 50% of their production costs, including labour, in South Africa, and be 'substantially transformed'. The company and its products or services must meet high quality standards
- The company must be committed to fair labour and employment practices
- The company must be committed to sound environmental standards.

By meeting these standards, consumers can be re-assured that companies and their products carrying the Proudly South African logo are of a high quality and socially responsible – not to mention supporting the local economy.

The Association formalised its membership at a recent Council meeting and is currently negotiating special rates for

member firms to become members in their own right and be able to use the logo.

Some of the benefits of being a 'Proudly South African' member include:

- The use of the logo, symbolising pride, local content, labour and environmental responsibility
- Brand exposure created by sponsors and the media campaign, which has a media value of more than R80-million over three years, provides a platform for adding value to marketing and promotional activities
- Networking opportunities to meet other members
- Assistance with tendering to local, provincial and national government as well as parastatal and corporate buyers.

For more information on special member rates call Roelof van Tonder on (011) 463-2022.



Labane Maluleke of Proudly South African (right) shares a moment with SAACE President Dempsey Naidoo.

PRESIDENT'S DIARY

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Here is an insight into what the President's diary looked like during the second quarter of the year:

- 9 April SAFCEC
- 16-17 April Presidential visit, KwaZulu-Natal
- 20 May Meeting with CSIR to discuss transformation strategy
- 21-23 May SAPOA
- 3-4 June Presidential visit, Bloemfontein
- 17 June Presidential visit, Border
- 18 June Presidential visit, Eastern Cape
- 19-20 June Presidential visit, Southern Cape
- 2 July Communication strategy workshop



From left: Colin Driver, Mike Rivarola, Dempsey Naidoo, Ray Farrugia and Craig Northwood (Chairman, Eastern Cape Border).



From left: Mavela Dlamini (Johannesburg Roads Agency), Dempsey Naidoo, Barry Ames (Chairman, Gauteng South) and Chris Brooke.



From left: Alex McTavish (Chairman, KwaZulu-Natal), Neil Tomie (SANRAL), Peter Viljoen and Dempsey Naidoo.

SAACE AGM/Convention

Champagne Sports Resort – Drakensberg

16 – 19 October 2003

Proposed programme

Thursday – 6/10

PM Delegates arrive at resort

14h00 Conference registration and check in

17h30 Team-building event

Braai

Friday – 17/10

07h00 Breakfast

08h30 Convention and exhibition

08h45 Opening address

Infrastructure as an intervention to stimulate growth and development and elimination of poverty.

09h45 Construction Industry Development Board

An overview of the construction industry and interventions to stimulate growth and development.

10h45 Tea/coffee

11h15 Finance Department

Future infrastructure spending in SA.

12h00 Department of Trade and Industry

BEE and current government thinking (balanced scorecard).

13h00 Lunch

14h00 Panel discussion with clients

Barriers to the delivery of infrastructure.

15h00 Tea/coffee

15h30 Tim Modise (radio and TV personality)

16h30 Convention ends

20h00 Irish pub evening

Saturday – 18/10

07h00 Breakfast

08h30 AGM

Exhibition continues

13h00 Lunch

14h00 Council meeting

Golf (four fourballs reserved from 12h00)

19h00 Dinner in main restaurant

Sunday – 19/10

07h00- Breakfast

10h00 Return home at leisure

Transfers to Durban for CT/EL/PE flights

Partner's programme

Friday – 17/10

10h00 Champagne Castle Ramble to local crafters.

Visit to Falcon Ridge for raptor show and lunch. Return to resort in time to listen to Tim Modise

Editor's note



It's been a hectic time at the Directorate with the deadline for the Directory and the Awards. Don't forget to book your table at the Awards dinner, which will be held at Caesars in Gauteng on 13 August.

This year, Bill Flynn will be entertaining us. The Awards dinner is definitely one of the premier events on the engineering calendar and a great opportunity to network with clients and colleagues.

Remember to diarise the AGM/Convention, which is taking place in the Drakensberg from 16 to 18 October (see the draft programme on left).

You may have seen the communications questionnaire that was sent out recently. The Communications Committee is busy looking at ways on how to improve communication and service to members and clients, as well as keeping the Association relevant in a fast changing industry.

Please keep us informed.

We recently had some excitement in the office when one morning we discovered a bullet hole in the window of our boardroom. The bullet had traveled straight across the boardroom, through the chairman's chair and into the wall under the President's picture. No, it wasn't somebody taking target practice, but some fleeing burglars being chased by security guards the previous night.

Lynn McSweeney
Member Services Manager
lynmmc@saace.co.za

Calendar of events

Important dates to diarise

Date	Event	Venue
*July 2003	Negotiation techniques	Gauteng
*16 July 2003	Dispute resolution	Gauteng
*28-29 July 2003	Business finance for non-financial managers	Gauteng
13 Aug 2003	Awards banquet	Gauteng
*August 2003	Fees and documents	Gauteng
6-10 Sep 2003	FIDIC convention	Paris
16-18 Oct 2003	AGM and annual convention	Drakensberg
8 Nov 2003	Consulting engineers relay	Pretoria

* School of Consulting Engineering