

On December 9, 2010, the Association of Professional Engineers of Trinidad and Tobago (APETT) hosted another free public consultation seminar, and the topic was Professional Ethics. I am coordinator of this series.

One of the facilitators was Rameshwar 'Bob' Mahabir, a practicing Civil Engineer, with forty-one of his 44 years since graduation being spent in contracting, all within the Caricom Region. His talk was on ethical behaviour from the contractor's perspective. Today, I present the first of two parts on his contribution.

In the past the most common form of contracting would involve an employer, a design engineering firm, and a contractor.

The employer could be a private company, but in most instances would be a Government agency. The employer selects the design company and provides a brief to the designer who develops the design which includes drawings, specifications, Bill of Quantities, Conditions of Contract, etc.

The design may take a few weeks to several months, depending on the project. Once agreement is arrived at between the employer and his design team, the employer issues a tender notice. It can be a public or selected tender—a decision of the employer.

If it is a public tender—from the issue of the tender documents, the bidders would normally have 28 days to prepare their tender.

The offer may include a tender bond, and must remain valid for 90 to 120 days as specified in the Invitation to Tender.

The successful bidder would receive a Letter of Acceptance with specific instructions to provide a Performance Bond, normally 10% of the contract price, within say, 28 days. The employer's engineer would give notice to commence the

work and a commencement date is agreed—from this date the specified time for completion is added, yielding a specified completion date.

The contractor must complete the work within the agreed period or face the possibility of paying Liquidated Damages for delays attributable to the contractor.

At completion, the engineer would issue a Taking-Over Certificate and the defects notification period would commence. If the work was properly designed and constructed there should be no defects of note. If there are defects attributable to poor workmanship and/or materials, the contractor must fix these defects to the satisfaction of the engineer/employer—all at the contractor's costs.

The engineer, when satisfied would issue the performance certificate and within 21 days thereafter arrange to release the Performance Bond.

The above scenario very rarely happens on jobs, and each party usually lays blame on the other, and leads to claims and counter-claims.

However, the Conditions of Contract attempt to clearly spell out the respective responsibility or liabilities of the employer, the employer's engineer and the contractors. Ethical behaviour and responsibilities become key for a timely and quality project.

Concerning public tender versus selected tender, Mahabir's view is that complex and technical projects should be done on a select tender basis with a rule of, say, not less than four bidders. Each of these bidders must demonstrate a reasonable history of completing similar projects with acceptable audited accounts with a net worth in sync with the project finances to start the project. He claimed that we have had major projects bid by newly formed companies with no

track record (finance and performance) and awards made to these companies which usually lead to complication, be it late delivery, non-delivery or litigation/claims.

New ambitious contractors would have to build a history of acceptable performance from small to medium and upwards, with good references from past employers and engineers to graduate to larger projects and selected tender inclusion—one has to creep before one walks. Employers and engineers must treat new contractors equitably and fairly, and in like manner, employers and engineers should not include new companies with no track record and/or good performance history.

Mahabir asked "*When public funds are being expended and an employer and his engineer approve a contractor with no previous experience or financial standing and that contractor fails to deliver what are the ethical responsibilities of the employer and the engineer?*"

He suggested that these situations arise when an employer imposes a "preferred" contractor for the engineer's ratification and award recommendations. The engineer supports the employer's wish and either lacks the back bone to stand firm and adhere to his ethical responsibility or for alternate reasons he cannot bank "ethics" to pay his staff and caves in to the employer's wish. An engineer must act in a professional and reasonably independent manner, notwithstanding, he is paid by the employer.

He cited a recent example of the award of 50 Early Childhood Care Centre to a Korean Company. The project was abandoned, the main contractor has disappeared, many of the local subcontractors remain unpaid and most sites are incomplete. "*Was the Performance Bond 'good'? Was the Bond called? What checks were done on*

*this company to be awarded a contract for some \$150 M. Who is responsible and what is being done to correct the loss of public money? During the award, the politicians of the day chastised local building contractors for over-charging among other negative comments.”*

To be concluded next week.

e-mail: [info@ccost.org](mailto:info@ccost.org)