

Road Pavement Forum
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ASPASA Exclusion Clauses

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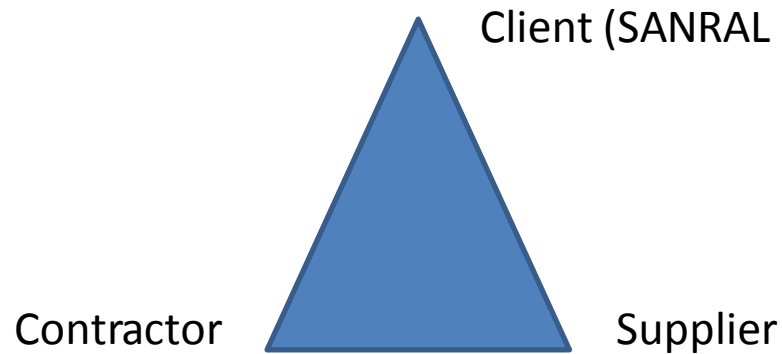


Why the Exclusion Clauses ?

- More than 17 years ago COLTO introduced
- No consultation with material suppliers, or ASPASA
- Industry had many situations where they were not paid for material supplied
- Industry got upset with trend – asked Aspasa Technical people in industry to work on COLTO
- Specialists came up with “COLTO” Exclusion clauses
- Renamed to ASPASA Exclusion Clauses
- These Clauses have been around for some 16 years
- Members have used them successfully
- Every few years industry looks at them again
- In 2016 the Technical people looked at them again
- Decided to send out to industry to see what industries view was:

COLTO or COTO is being revised, perhaps all the clauses that ASPASA has a problem with can be resolved in new COTO.

The Relationship



All 3 protect their own situation:

Client:

- Tender document
- Tender Conditions

Contractor:

- Cover letter at tender stage
- Then constant negotiations

Supplier

- Has certain conditions
- Need payment, i.e. 30 days

The details affecting each party

Client:

- Develops & agrees legal contract with contractors
- Requires the contractor to comply to specifications, normally the COLTO document
- Engineer ensures that Contractor complies with tender conditions
- SANRAL knows that a road is not built in a laboratory and allows variation in spec.

ASPASA's view

- ASPASA has no problem with specification as long as:
 - They are achievable;
 - The ASPASA member understands the specifications

Contractor:

- Has contract with Client
- Has contract with Suppliers (Aggregate, Cement, Bitumen)
- Must produce and contracts to specifications from client
- Variations to be agreed (in writing) during tender stage or site meeting with Engineers from both Suppliers & Contractor
- Contractors ensure that Engineers requirements fall within the tender conditions.
- Contractor delivers a product, i.e. road within spec.

ASPASA's view

- Aspasa needs clear understanding from Contractor
- Contractor/Laboratories need to know what they want and must understand the situation/product

The details affecting each party, cont.



Supplier

- Supplier/contractor has a proper legal contract
- There must be a specification document, except for exclusions where the specifications are not achievable or unrealistic
- Supplier ensure that correct material is supplied
- Correct materials means – at the gate
- Supplier cannot be held responsible if the contractor allows:
 - Segregation
 - Over-compacting
 - Working in sub-base materials into base to increase PI to get easier compaction
 - Allows deleterious materials into the base course

ASPASA's view

- Aspasa members have to protect themselves from subjective tests open to interpretation with variables such as PSV's & Ethylene Glycol tests by using the exclusion clauses.

Examples of issues picked up in Industry recently

1. SANRAL accuses industry of not supplying consistent quality products!
(does aggregate industry have relationship with SANRAL)

Response:

- Aggregate suppliers work with a mineral from the earth which can change
- The blasting process can change the mineral
- Wear and tear on the crushers liners can influence
- The nature – rain or wind can change the mineral on daily grading's
- The grading re the measurement
- Mineral not from a laboratory
- Contractors compaction is not consistent, i.e. one day 88% and next day 90%
- Compaction influenced by moisture content, type and setting of roller etc.

2. SANRAL accuses industry, quarry suppliers of raising prices once they hear bout road project.

Response

- There are many cases where the established quarry does not even get approached.
- The pricing of aggregate is not controlled in the same way as precious metals, i.e. gold or diamonds
- The Competition Commission does not allow ASPASA to set prices, keep records of sales done, etc.
- ASPASA cannot be involved in setting prices, regions, scarcity or speciality of mineral must be done by Contractor/Supplier
- Aggregate and sand as mineral prices are meniscal compared to bitumen
- Options to negotiate with bitumen suppliers are few and contractor accepts these but accuses aggregate suppliers of being too expensive.

Industry accuses Clients/Contractors of opening Borrow Pits all over



- The Mineral Resources Petroleum Development Act, MacSand case, LUPO, NEMA, MHSA all make it clear that removing aggregate and sand is mining
It is ASPASA's duty to inform the Regulators when the laws are broken.

ASPASA is seen as the “enemy”

- Not sure why – work with ASPASA – things may be easier
- ASPASA cannot stand in for all the problems experienced
- Not one complaint has ever been sent to ASPASA asking for help or to intervene
- ASPASA members have to comply to all legislation applicable to the mining industry – so must others doing same work – the playing fields shall be equal
- The Regulators are strict on the formal mines which include quarries. Many issues are held against the formal producers.
- Using illegal and non-compliant mineral extraction is being reported to DMR/DEA/Water Affairs/SARS/Treasury etc. as all these departments focus on mines
- Competition Commission also to play a role in business.

Material is contaminated!

- Site stockpiles areas not compliant to COLTO page 3200-1, paragraph 3203 (Handling of material by loader operation on site)

Wrong/Incorrect Material is supplied!

- Look at transporter
- Check if “Site Agent” has ordered correct material.

Material is out of specification – who is responsible?

- Contractor does not inspect the material at quarry
- Contractor does not test material as delivered – only raises the problem when thousands of tons on site
- COLTO page 1200 – 3, paragraph 1205
- Transporter with side tippers off loading bit by bit
- Segregation of material happens
- Grader operators do not mix material as set out on COLTO page 3200 – 4
- Public use road while material is offloaded – segregation
- Samples of material after compaction. Was material well mixed.
- Sampling not done in accordance to TMH5 – causes test results to fail (material rejected)
- Engineer rejects road stone results of thousands of tons but:
 - 9 tests were done on huge stockpile and then only 3 samples are slightly out on ALD
 - Material is already pre-coated.

- Contractor must approve material as the source
- Designation stockpiles to be kept for specific project
- Once material leave quarry – responsibility shifts to Transporter and Contractor
- Always treat material with respect, it must last for many years
- On 7 May 2002 – RPF – Resolution:

“Road Building Specification Working Group”?

*Remember: **South Africa is built with quality AGGREGATES***