**South African Council for the Architectural Profession**

**PROFESSIONAL PRACTICE EXAMINATION**

**OCTOBER 2020**

**PAPER 2 – MEMORANDUM**

* This is an open book paper. Only material listed in the suggested Reading Material circulated by SACAP for this examination is allowed to be used.
* Candidates must answer all questions.
* Total marks for paper 2 – **150 marks**
* Time allowed for paper 2 – **3 hours**
* Pass mark – **50%** in either paper
* Please ensure that you have provided your correct **EXAMINATION NUMBER** for identification purposes.
* No cell phones, programmable calculators, laptops and/or other electronic equipment are permitted to be used during the examination.

**QUESTION 1** *30 marks*

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| 1.1 | South African contract law is essentially a modernised version of which law of contract? | (2) |
| Roman (1) Dutch (1) law |
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| 1.2 | 1. | Provide the legal definition of a "contract". | (4) |
| A contract is an agreement (1) made with the serious intention (1) to create a legal obligation (1), which gives rise to the rights and duties of the parties (1). |
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| 2. | What aspect of this definition differentiates a contract from an agreement? | (3) |
| A serious intention |
|  |
| 1.3 | Identify and describe three (3) actions that would constitute a breach of contract *(3 marks each)*. | (9) |
| *Any three of the following (1 mark for each type plus 2 marks for each description):** POSITIVE MAL-PERFORMANCE: (1)

A party to the contract only performs partially, or delivers a defective performance (2)* DEFAULT BY DEBTOR: (1)

The debtor (the party who gets paid) does not deliver the required performance to the creditor (the party who pays) on time (2)* DEFAULT BY CREDITOR: (1)

The creditor does not cooperate or accept the delivery of the debtor’s performance (2)* REPUDIATION: (1)

A party to the contract communicates to the other party that he/she rejects her/his contractual duties or will be unable to perform (2)* PREVENTION OF PERFORMANCE: (1)

Either party prevents delivery of performance by destroying the performance or rendering it impossible to deliver the performance (2) |
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| 1.4 | Aside from acting as the principal agent during construction, under what other circumstance would a relationship of agency exist between an architectural professional and a client? | (6) |
| *Either of the following or in a similar vein (6 marks):** When providing the services of an agent of the client during construction
* When submitting documentation on behalf of the client to the local authority
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| 1.5 | What would an employer typically be required to provide when a contractor is required to waive the lien as part of a construction project? | (3) |
| A guarantee for payment |
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| 1.6 | Which liability to the public is one not able to contract out of as part of the provision of architectural services? | (3) |
| Delictual liability |
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**QUESTION 2** *30 marks*

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| 2.1 | Describe three (3) disadvantages of entering into a BESPOKE form of construction contract *(3 marks for each)*. | (9) |
| *Any of the following or in a similar vein (3 marks each – total 9 marks):** Bespoke construction contracts may not provide for all circumstances.
* This form of contract is not necessarily supported by case law.
* Lengthy negotiation may be required before an agreement is reached.
* The terms and conditions of the contract may not be equitable.
* There may be disproportionate levels of risk between the parties.
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| 2.2 | Describe three (3) advantages of entering into a STANDARD form construction contract *(3 marks for each)*. | (9) |
| *Any of the following or in a similar vein (3 marks each – total 9 marks):** Standard form construction contracts have been developed by various bodies within the construction industry, and are continuously developed and updated to take into account new industry developments.
* These contracts have a track record and have been tested in case law.
* It is usually simpler to evaluate tender offers, which are compiled with the same level of risks in mind.
* They avoid the costs and time required for negotiated bespoke terms.
* Support is available through various workshops and guidelines.
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| 2.3 | As part of which construction pricing strategy is the contractor compensated for the costs incurred to carry out the works? | (3) |
| A cost-plus contract |
|  |
| 2.4 | Identify three (3) ways in which the quantities for a construction contract may be calculated as part of the bill of quantities pricing strategy *(2 marks for each)*. | (6) |
| *Any three of the following (2 marks each – total 6 marks):** Length
* Area
* Volume
* Weight
* Time
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|  |
| 2.5 | What would a contractor typically do in order to overcome the risks involved in fixing the contract sum for a construction project? | (3) |
| Increase the tender amount of the works |
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**QUESTION 3** *15 marks*

* Select the correct answer from the list provided. There is only one correct answer to each question.
* Provide only the question number and the letter of the selected answer.
* The acronym 'JBCC-PBA' refers to the JBCC Principal Building Agreement.

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| 3.1 | Over and above the standard scope of service, an architectural professional may request additional fees to carry out the obligations of the principal agent within the JBCC-PBA. | (3) |
| A. | TRUE |
| **B.** | FALSE |
|  |
| 3.2 | In the JBCC-PBA, the latent defects liability period runs… | (3) |
| A. | until the final payment certificate is issued |
| B. | until practical completion |
| **C.** | from when the site is handed over |
| D. | from when the tender is awarded |
|  |
| 3.3 | It is incorrect to say that the principal agent "manages" the contractor as part of the obligations in the JBCC-PBA. | (3) |
| **A.** | TRUE |
| B. | FALSE |
|  |
| 3.4 | There is no clause within the JBCC-PBA that provides for a way in which to evaluate the contractor’s performance. | (3) |
| A. | TRUE |
| **B.** | FALSE |
|  |
| 3.5 | The contractor is the only party to the JBCC-PBA who has the right to suspend the works. | (3) |
| **A.** | TRUE |
| B. | FALSE |
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**QUESTION 4** *40 marks*

*NOTE: The answers and reasoning to question 4 are provided below. Should candidates provide different answers, the marker is required to assess the candidate’s insight and allocate marks accordingly.*

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| You have been appointed to act as principal agent on a project that entails additions and alterations to an existing office building. A quantity surveyor has been appointed on the project, which is expected to last 12 months and requires the sectional completion of the works in order for the occupants to continue making use of parts of the building during construction. Having carried out the procurement (tender) process based on a bill of quantities, you have identified a potential contractor for the project, and are now entering into negotiations on behalf of your client (the employer). |
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| 4.1 | The contractor wishes to make use of the JBCC Minor Works Agreement (JBCC-MWA). Provide two (2) reasons why you would advise both parties to rather enter into the JBCC Principal Building Agreement (JBCC-PBA) *(4 marks for each)*. | (8) |
| *Any of the following or in a similar vein (4 marks each):** The JBCC-MWA is for an anticipated construction period of less than nine months
* The JBCC-MWA cannot be used for sectional completion
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| 4.2 | Following your advice, the contractor and the employer have agreed to enter into a JBCC Principal Building Agreement (JBCC-PBA) for the project. What is deemed to have occurred before the agreement is signed? | (4) |
| The employer has accepted (2) the contractor’s offer (tender) to carry out the works (2). |
|  |
| 4.3 | During a site meeting, the contractor enquires about the status of a claim for a revision of the date for practical completion that was reported verbally in a previous site meeting. |
| 1. | Why would you not provide your ruling as part of the discussions in a site meeting? | (6) |
| Under the JBCC-PBA, the contractor is required to submit a notification of intent to claim (3), followed by a claim for a revision of the date for practical completion (3). |
|  |
| 2. | Under which circumstances would the contractor be correct to assume that this type of matter will be resolved in a site meeting? | (4) |
| If the parties had entered into the JBCC Minor Works Agreement (JBCC-MWA). |
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| 4.4 | During a site inspection, you noted that the contractor is making use of existing balustrades as scaffolding to create a platform from which to work. While you strongly disagree with this method and believe it to be unsafe, what may you require the contractor to provide prior to proceeding with this portion of the works? | (4) |
| The principal agent may require that a report be compiled by a registered construction health and safety officer. |
|  |  |  |
| 4.5 | Despite the challenges and contractual disagreements, the contractor now informs you that a section of the works are complete and may be occupied. What is the principal agent required to provide prior to the occupation of this section? | (4) |
| A practical completion certificate (2) of the completed section (2). |
|  |
| 4.6 | When acting as principal agent, identify one (1) obligation that you ARE permitted and one (1) obligation that you are NOT permitted to delegate to the quantity surveyor? *(3 marks for each)* | (6) |
| The principal agent IS PERMITTED to delegate the preparation of valuations for interim and final payment certificates *(3 marks)*The principal agent IS NOT PERMITTED to delegate the issuing of an interim or final payment certificate to the contractor *(3 marks)* |
|  |
| 4.7 | Aside from the contractual obligations involved, provide two (2) reasons why is there an allowance for interim payments to be made to the contractor in terms of the JBCC Principal Building Agreement? *(2 marks for each)* | (4) |
| In order to provide payment for the goods and services that have been provided (2) and to provide the contractor with the funds required to proceed with the works (2). |
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**QUESTION 5** *15 marks*

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| 5.1 | In terms of the JBCC Principal Building Agreement (JBCC-PBA), what is the overriding obligation of the principal agent when assessing the contractor’s claim for a revision of the date for practical completion? | (3) |
| To act and evaluate the claim FAIRLY between the parties. |
|  |
| 5.2 | Provide a possible reason for the contractor’s obligation to provide the principal agent with a notification of intent to claim for a revision of the date for practical completion. | (3) |
| In order for the principal agent to act in order resolve any delay that may have been caused by the employer or the employer’s agents. |
|  |
| 5.3 | 1. | In terms of the JBCC-PBA, what type of event is considered to have occurred as part of the national lockdown experienced earlier this year? | (3) |
| A *force majeure* event. |
|  |
| 2. | Provide two (2) reasons why it is NOT recommended for the principal agent to instruct the contractor to accelerate the works as a result of this type of event *(3 marks each)*. | (6) |
| *The following reasons or in a similar vein (3 marks each – total 6 marks):** It is the contractor’s obligation to supervise and program the works in order to meet the date for practical completion
* Interference with the programming of the works by the principal agent may result for additional claims for the revision of the date for practical completion WITH and adjustment to the contract value
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**QUESTION 6** *20 marks*

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| 6.1. | Provide three (3) reasons for the growing number of disputes in construction projects *(2 marks each)*. | (6) |
| *Any three of the following or in a similar vein (2 marks each – total 6 marks):** The increased scale + complexity of buildings.
* The increased use of specialised subcontractors.
* More complex construction methodologies.
* Fast-tracking is becoming the norm.
* The contractor's capital + cash flow is tied up during construction.
* Contractors are chosen for low price not for their standard of construction.
* The shortage of construction work results in a reduction of pricing by contractors – meaning that there is no margin for error.
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| 6.2 | * Select the correct answer from the list provided.
* There is only one correct answer to each question.
* Provide only the question number and the letter of the selected answer.
* The acronym 'JBCC-PBA' refers to the JBCC Principal Building Agreement.
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| 1. | An architectural professional may act as the principal agent and the adjudicator on the same construction project in terms of the JBCC-PBA. | (3) |
| A. | TRUE |
| **B.** | FALSE |
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| 2. | An architectural professional may participate in the settlement proceedings when appointed to act as the principal agent in terms of the JBCC-PBA. | (3) |
| **A.** | TRUE |
| B. | FALSE |
|  |
| 3. | Which form of dispute resolution provided in the JBCC-PBA is recommended when the dispute involves the amount certified in an interim payment certificate? | (3) |
| **A.** | Adjudication |
| B. | Arbitration |
|  |
| 4. | Which form of dispute resolution is not provided in a standard form professional service agreement between the architectural professional and the client? | (3) |
| **A.** | Adjudication |
| B. | Arbitration |
|  |
| 6.3 | Why do you believe the JBCC Principal Building Agreement stipulates that both parties shall continue to perform their contractual obligations, regardless of whether a disagreement or a dispute exists between them? | (2) |
| In order to ensure that the project proceeds, despite a disagreement or a dispute between the parties. |
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