**South African Council for the Architectural Profession**

**PROFESSIONAL PRACTICE EXAMINATION**

**25 MARCH 2020**

**PAPER 2 – MEMORANDUM**

* This is an open book paper. Only material listed in the suggested Reading Material circulated by SACAP for this examination will be allowed in the examination room.
* Candidates must answer all questions.
* Total marks for paper 2 – **150 marks**
* Time allowed for paper 2 – **3 hours**
* Pass mark – **55%** in either paper, and an average of **60%** for the two papers combined
* Please ensure that each exam book that you use displays your correct **EXAMINATION NUMBER** for identification purposes.
* No cell phones, programmable calculators, laptops and/or other electronic equipment will be permitted in the examination room.

**QUESTION 1** *30 marks*

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| --- | --- |
| 1.1 | Provide the missing word(s) to complete the following sentences: |
| 1. | A contract requires the common intention from at least \_\_\_\_\_\_\_\_\_ persons. | (2) |
| two (2) |
|  |
| 2. | Not every agreement constitutes a \_\_\_\_\_\_\_\_\_. | (2) |
| contract (2) |
|  |
| 3. | When an offer is returned and the original terms have been materially altered, this constitutes a \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_. | (4) |
| counter (2) offer (2) |
|  |
| 4. | A delictual duty is a \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ arising between people independent of any contractual or other legal relationship between them. | (4) |
| legal (2) obligation (2) |
|  |
| 5. | Agency is the \_\_\_\_\_\_\_\_\_ position where one person is \_\_\_\_\_\_\_\_\_ to act with \_\_\_\_\_\_\_\_\_ on behalf of another to create legal relations with a third party. | (6) |
| legal / contractual (2) | authorised / mandated (2) | authority (2) |
|  |
| 1.2 | Identify and describe four factors that are required in order for an agreement between two parties to constitute a binding contract that gives rise to a legal obligation. | (12) |
| *Any of the following or in a similar vein (3 marks each – total of 12 marks):** Consensus: the parties to the contract must have the same intention of creating a legal obligation with certain legal consequences between them.
* Contractual capacity: the parties must have the legal ability to form an intention.
* Legality: the contract must be legal and must therefore not be in conflict with either common law or legislation.
* Possibility: the performance (or non-performance) in terms of the contract must be possible and determined (or determinable).
* Formalities: the contract must be reduced to some visible form as required or prescribed.
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**QUESTION 2** *30 marks*

|  |  |  |
| --- | --- | --- |
| 2.1 | Identify three factors that should be considered by the architectural professional when advising a client on the appropriate choice of building contract for a project. | (6) |
| *2 marks for any of the following or in a similar vein (total 6 marks):** Location of project
* Type of client
* Expected value or scope of the project
* Nature of the project
 |
|  |
| 2.2 | Without the provisions of a building contract, when may the contractor expect to be paid for the works? | (2) |
| On completion of the works in their entirety |
|  |
| 2.3 | Without the provisions of a building contract, what is the duration of the contractor’s latent defect liability? | (2) |
| Indefinitely |
|  |
| 2.4 | Describe three major characteristics of a domestic subcontractor. | (6) |
| *2 marks for each of the following (total 6 marks):** the contractor has chosen and awarded
* employer has no right to approve or disapprove
* contractor is wholly at risk
 |
|  |
| 2.5 | Identify two other forms of subcontract that may be encountered on a building project. | (4) |
| Nominated (2) and selected subcontractor (2) |
|  |
| 2.6 | Which form of subcontract exposes the principal contractor to the greatest level of risk? | (3) |
| Domestic subcontractor |
|  |
| 2.7 | Which form of subcontract exposes the employer to the greatest level of risk? | (3) |
| Nominated subcontractor |
|  |
| 2.8 | What does the indemnity provided by a subcontractor over the architectural professional typically entail? | (4) |
| The design (2) and choice of materials (2) of the architectural professional. |
|  |

**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 | The JBCC-PBA is a \_\_\_\_\_\_\_\_\_ document. | (3) |
| A. | formulisation |
| B. | competitive |
| C. | variation |
| **D.** | consensus |
|  |
| 3.2 | The employer warrants that the principal agent… | (3) |
| A. | proceeds with due diligence, regularity, expedition, skill and appropriate resources |
| **B.** | has full authority and obligation to act in terms of the agreement |
| C. | is able to manage the building contract |
| D. | is registered with the SACAP |
|  |
| 3.3 | The contractor becomes liable for penalties if the date for \_\_\_\_\_\_\_\_\_ has not been achieved. | (3) |
| A. | final completion |
| B. | sectional completion |
| C. | interim completion |
| **D.** | practical completion |
|  |
| 3.4 | The principal agent has the right to suspend the works. | (3) |
| A. | TRUE |
| **B.** | FALSE |
|  |
| 3.5 | The principal agent must be a registered professional person. | (3) |
| A. | TRUE |
| **B.** | FALSE |
|  |

**QUESTION 4** *40 marks*

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

|  |
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| You have been appointed as principal agent on a residential project in which the JBCC Principal Building Agreement is used. The professional team members on the project include a quantity surveyor and structural engineer, who the employer has duly appointed as agents on the project. |
|  |
| 4.1 | During a professional team meeting, there is some confusion between the consultants as to the aspects of authority of the principal agent and the other agents. To clarify, describe four aspects of your authority as principal agent that you may not delegate to the quantity surveyor nor to the structural engineer. | (12) |
| *Any of the following reasons or in a similar vein (3 marks each – total 12 marks):** issue an interim or final payment certificate to the contractor
* issue special payment certification relating to a nominated or selected subcontractor
* issue a practical or final completion certificate
* grant, refuse or reduce the contractor’s application for the revision of the date for practical completion
* issue notices of cancellation of the agreement
 |
|  |
| 4.2 | The procurement (tendering) process for the above project has commenced. Identify four steps that you would follow in the process of submission and receipt of tender offers from prospective contractors. | (8) |
| *Any of the following steps or in a similar vein (2 marks each – total 8 marks):** Tenders should always be submitted in sealed envelopes, marked clearly and externally with the Employer’s name and the contract name, by a pre-arranged date and time at a pre-arranged venue (e.g. the client’s tender box);
* The opening of tenders should be done publicly, i.e. in front of any tenderers who wish to be present;
* Tenders should be opened at a previously arranged date, time and venue;
* Tenders should be read out and whether there are any qualifications. Results should be recorded in order of opening, not necessarily in order of value.
 |
|  |
| 4.3 | The contractor that was appointed on the project above has commenced with excavations for foundations and encountered a large concrete platform that was seemingly from a previous project and was therefore not recorded in any construction documentation. The contractor is willing to demolish this immediately, but what would you advise as the correct procedures to follow before the contractor commences with this demolition work? | (6) |
| As this demolition was not expected, there would not have been a monetary allowance for this work in the tender documentation. The contractor should be advised to provide a price for this work prior to commencement (3), and would be entitled for a revision of the date for practical completion with an adjustment to the contract value is this is claimed (3). |
|  |
| 4.4 | Having carried out the demolition, the contractor has contacted you to urgently provide an interim payment certificate one week after having received a previous certificate. Describe what you would rely on to determine the frequency of interim payment certificates. | (4) |
| The frequency of payment certificates is recorded in the Contract Data portion as agreed to by the contractor. |
|  |
| 4.5 | Despite the implications of the additional work required to demolish the concrete platform at the start of the project, the contractor has successfully achieved practical completion on time, and the final completion for the project is now underway. Describe five consequences of the achievement of final completion that have an effect the rights and obligations of the contracting parties. | (10) |
| *Any of the following items or in a similar vein (2 marks each – total 10 marks):** The contractor’s obligations in terms of the agreement have been fulfilled
* The contractor’s public liability in relation to the works ceases
* The value of the guarantee for construction (variable) reduces to 2% of the contract sum until the final payment
* All subcontractor’s guarantees, warrantees or indemnities are deemed to be ceded to the employer
* The latent defects liability period continues until five years from the date of final completion
* The principal agent issues the final payment certificate within 90 calendar days after the certified date of final completion
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|  |

**QUESTION 5** *15 marks*

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| 5.1 | In terms of the JBCC Principal Building Agreement, which of the following options will apply to each of the scenarios below:*option A =* Entitled to a revision of the date for practical completion*option B =* Not entitled to a revision of the date for practical completion*option C =* Entitled to an adjustment to the contract value*option D =* Not entitled to an adjustment to the contract value |
|  |  |
| 1. | Site handover was delayed for two weeks following the date stipulated in the contract data. | (2) |
| options A (1) and C (1) |
|  |
| 2. | The contractor failed to notify the principal agent of delays due to strike action by the workforce on site. | (2) |
| options B (1) and D (1) |
|  |
| 3. | An instruction to carry out additional works not provided for in the contract documentation delayed work on site. | (2) |
| options A (1) and C (1) |  |
|  |
| 4. | The principal agent did not provide a ruling on a claim submitted within the period provided. | (2) |
| options B (1) and D (1) |
|  |
| 5. | Abnormal rainfall has prevented progress of the works. | (2) |
|  | options A (1) and D (1) |
|  |
| 5.2 | Who determines whether or not the contractor is liable for penalties should the date for practical completion be exceeded? | (3) |
| The employer |
|  |
| 5.3 | Who is responsible for the procurement of an occupation certificate from the local authority? | (2) |
| The employer |
|  |

**QUESTION 6** *20 marks*

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| 6.1 | What is the most common means for the lawful termination of a contract? | (4) |
| The performance of all contractual obligations |
|  |
| 6.2 | What is the alternative to the dispute resolution provisions contained in standard form professional service agreements or building contracts? | (2) |
| Litigation |  |
|  |
| 6.3 | When a dispute arises that involves a payment amount due to a contractor, which form of dispute resolution would you advise? Provide a reason for your answer. | (4) |
| Adjudication (2) would be the preferred form, as a determination must be made within a specified period of time (2) |
|  |
| 6.4 | Which form of dispute resolution may run in parallel with other dispute resolution procedures? | (2) |
| Mediation |
|  |
| 6.5 | Which form of dispute resolution is unsuitable when neither party is willing to make any concessions? | (2) |
| Mediation |
|  |
| 6.6 | Aside from the provisions contained in the SACAP Code of Professional Conduct, provide three examples of what in your view would be regarded as unethical behaviour in the provision of services as an architectural professional? | (6) |
| *Not all possible answers are listed, and the marker will be required to assess the insight of the candidate in answering this question. (2 marks each – total of 6 marks)* |
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