

**The Association
of South African
Quantity Surveyors**



**BRIEF SUMMARY OF THE MAJOR DIFFERENCES
BETWEEN
JBCC EDITION 6.1 & 6.2
SUITE OF DOCUMENTS**

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BRIEF SUMMARY OF THE MAJOR DIFFERENCES BETWEEN THE JBCC EDITION 6.1 & 6.2 SUITE OF DOCUMENTS

Important note

This summary is an attempt to indicate the major differences between the two suites of documents but is not necessarily exhaustive

1. THE CHANGES REQUESTED BY THE ASAQS:

1.1. Definition of agreement

Concern

The definition of “agreement” in JBCC 6.1 is as follows:

“AGREEMENT”: The JBCC® Principal Building Agreement and the completed JBCC® PBA **contract data**”

The defined term “agreement” is used extensively throughout the principal building agreement, the contract data and thus also in Bill No.1 (Preliminaries). The definition of “agreement” should consider that there may be documents, other than the PBA and the contract data, which should be included in the agreement, even if not specifically listed in the contract data. Last minute (post tender) annexures should also be within a broader definition of “agreement”

Agreed changes

The definitions related to the abovementioned concern in JBCC 6.2 have been changed as follows:

AGREEMENT: The completed **JBCC®** Principal Building Agreement and **JBCC® contract data**, the **contract drawings**, the **priced document** and any other documents reduced to writing and signed by the authorised representatives of the **parties**”

As a result, the definition of “contract documents” was deleted. The edition 6.1 definition of “contract documents” is repeated here for convenience:

“CONTRACT DOCUMENTS: This **agreement**, the **contract drawings**, the **priced documents** and other identified documents [CD]”

The definition of “priced document” has changed to include “preliminaries” as follows:

“PRICED DOCUMENT: The document incorporating quantities and/or rates used in the compilation of the **contract sum** such as **bills of quantities**, **preliminaries** and schedules of rates”

1.2. Precedence (subclause 5.6 of edition 6.1)

Concern

The JBCC PBA and associated documents provide the tool but Bill No.1 (Preliminaries) is project specific and should therefore take precedence. Subclause 5.6 of edition 6.1 indicates the opposite. It is worded as follows:

“The **contract documents** shall be deemed to be mutually explanatory of one another. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them, this **agreement** shall prevail over all other **contract documents**”

Agreed change

Subclause 5.6 of edition 6.1 has been deleted

1.3. Employer to identify services connections

Concern

In terms of subclause 12.1.5 (edition 6.1) “The **employer** shall identify access to water, sewer, stormwater and/or electricity connections to the **site** [CD]”

The employer is, in terms of subclause 12.1.5 (edition 6.1), involved in aspects of the execution of the works (temporary services) which has always been the responsibility of the contractor. The contractor should obtain from the local authority the temporary services which could be available as the contractor is aware of his temporary services requirements. Major claims against the employer are possible should the party representing the employer not realise the hidden implications of this clause

Agreed change

Subclause 12.1.5 of edition 6.1 has been deleted

1.4. Statutory and other notices

Concern

Subclause 12.1.6 of edition 6.1 reads: “The **employer** shall list statutory and other **notices** the **contractor** must submit and/or comply with before possession of the **site** can be given”

It is the responsibility of all parties to comply with the statutory and other notices which they are individually responsible for. Should this clause not be fully complied with it could lead to major claims against the employer

Agreed change

Subclause 12.1.6 of edition 6.1 has been deleted

1.5. Errata

Concern

The long list of errata (with errors also in the errata list) is unacceptable

Agreed change

Rigorous quality control had been introduced before edition 6.2 was published

1.6. Contract data

The following concerns of the ASAQS relating to the contract data have been addressed in edition 6.2:

- 1.6.1. User friendliness of the contract data. Not always clear what is required (difficult to complete without guidelines). There are space and writing style issues
- 1.6.2. The user friendliness of the contract data is now generally improved. The space issues have been improved and the writing style issues have been attended to
- 1.6.3. Insurance selections not user friendly and in certain cases, such as lateral support insurance, problematic

This section in the contract data (CD clause B6.0) has been revised

Changes made to JBCC documentation

Concern

In the contract data under "Changes made to JBCC® documentation" the following note appears in edition 6.1:

"The amendments contained herein or in the single referenced Annexure constitute the only amendments to the standard JBCC Agreement that will apply. No other amendments shall be of any force or effect"

The ASAQS concern is that changes to the JBCC conditions of contract may only be listed in the space provided or in a single referenced Annexure. It is not acceptable that any other changes may be of no "force or effect"

In the past changes to the conditions of contract were introduced in Bill No.1 (Preliminaries) under the JBCC clause headings. For various reasons this is the best place to insert such changes

Changes made in subcontract documentation (e.g. for mechanical installation subcontracts) (which may be on drawings and/or in specifications) may also be null and void under the edition 6.1 note

Agreed change

The above introductory statement has now been replaced with the following:

“Reference may be made to other documents forming part of this **agreement**”

1.7. Adjustment of preliminaries

Concern

The adjustment of preliminaries is poorly worded in edition 6.1 and could lead to misinterpretation

Agreed changes

The clauses relating to payment (CD clause D3.0) and the adjustment of preliminaries (CD clause D4.0) have now been reworded. It now also deals with the payment adjustment of preliminaries in lump sum contracts and the problem with payment of preliminaries (Option B) where the contractor has fallen behind programme is now dealt with by the insertion of new wording that says that: “Payment of the time-based charge shall be adjusted from time to time as may be necessary to take into account the progress of the **works**”

1.8. Clause without meaning

Concern

In the tender submission (item 4 on page 10 of the contract data edition 6.1) and elsewhere (PBA page 32) the following clause appears:

“Any provision in this **agreement** that may confer any benefit or right in favour of any subcontractor shall be binding on the **parties** and be capable of acceptance by such **subcontractor** at any time”

Agreed change

The above clause has now been deleted in both places

1.9. Objecting to the final account

Concern

In PBA edition 5.0 the contractor had to “give reasons” for objecting to the final account. In PBA edition 6.1 these words were deleted (subclause 26.12)

It is not acceptable that the contractor does not have to give reasons when objecting to the final account

Agreed change

The words “with reasons” have been reinstated (new subclause 26.11)

2. OTHER CHANGES TO BE NOTED ARE AS FOLLOWS:

2.1. Disclaimer

A disclaimer clause has been inserted in all JBCC edition 6.2 documentation (refer to page 1 of 2 of the PBA). This page has also undergone a major rewrite

2.2. JBCC® General Preliminaries

It was agreed that the JBCC will take over the publication of the ASAQs preliminaries document, now to be known as the JBCC® General Preliminaries

2.3. Compensatory and default interest

“Compensatory interest” and “default interest” are now defined in the definitions section of the PBA 6.2 edition. In edition 6.1 this was dealt with in the text of the relevant clauses

2.4. Social media

Formal notices by electronic mail now exclude notices using social media (notice definition and delivery clause)

2.5. Definitions

2.5.1. Minor changes to many of the definitions other than mentioned hereinbefore

2.5.2. The defined term “mora interest” is deleted and is no longer referred to

2.5.3. As some countries may have different methods of tax calculation the definition of **TAX** was amended to read “Value-added tax, general sales tax or similar consumption tax applicable by **law**”

2.6. Documents

The heading is shorter and subclause 2.2 in edition 6.1 has moved to a new position as clause 5.1 under this heading

2.7. Offer and acceptance

Subclause 3.4 in edition 6.1 was deleted and replaced by much shorter wording that reads: "Should any provision of this **agreement** be unenforceable the **parties** shall act in good faith to agree alternative provisions in terms of this **agreement**"

2.8. Other insurances

Major changes to the insurance provisions (clause 10.0 of PBA edition 6.2) and CD have been introduced

2.9. Builder's lien

As a "lien" on property is not always understood in some countries the clauses dealing with waiver of lien is extended to include "or right of continuing possession of the **works**" (edition 6.2 subclauses 11.10 and 25.14.2) as was the case in edition 5.0

2.10. Period for inspection and issue of list for practical completion

The clauses dealing with the period allowed for inspection of the works (old subclause 19.1.3) and the issue of the list for practical completion (old subclause 19.3) is now combined in new subclause 19.3

2.11. Penalty

In subclause 24.2 of PBA edition 6.2 it is now made clear that penalties shall be applied "on instruction from the employer"

2.12. Payment for materials and goods off site

The clause which deals with the payment for materials and goods off site was somehow not transferred to PBA edition 6.1. It has now been edited and re-inserted in subclauses 25.4.1 - 3 of PBA edition 6.2

2.13. Period for issue and acceptance of final account

The final account to be prepared and issued within 60 working days (in lieu of 90 calendar days) (subclause 26.10) and the contractor shall accept the final account within 30 working days (in lieu of 45 calendar days) (subclause 26.11). This is to overcome the problem where these periods fall over the annual contractor's holidays

2.14. Termination and dispute resolution (clauses 29.0 and 30.0)

The dispute resolution clause (clause 30.0) (refer specifically to new subclauses 30.9 to 30.12) is now to an extent reworded with a fair number of changes and restructuring in the wording of the termination clause (clause 29.0)

2.15. International use

The names of the constituent members of JBCC have been removed from the cover page

Currency to be indicated in the contract data

The term “cost fluctuations” has been used in addition to the South African term “contract price adjustments”

In the adjudication/arbitration default clause (subclause 30.10) the previous reference to a South African organisation, namely the “Association of Arbitrators (Southern Africa)” is now replaced by the wording ...the right to choose a local recognised body to suggest one or more persons with appropriate skills ...

2.16. Defining sections

A space has been created in the contract data to define sections. It is also made clear that the last section should be “Remainder of the **works**”

2.17. Intervals for issue of regular payment certificates

The confusion related to what is required to be filled in against clause 25.0 of CD edition 6.1 in respect of the intervals for the issue of regular payment certificates has to an extent been alleviated. Provision for weekly certificates has now been removed

2.18. Use by organs of state

Space is provided in the contract data for general changes but also for the insertion of specific clauses required by organs of state [CD clause B15.0]. Organs of state can now deal with their specific requirements in the CD or refer to their own Model Bill No.1 (Preliminaries)

3. OTHER DOCUMENTATION

The following other documentation has been created or updated:

3.1 Supplementary forms

3.2 N/S Subcontract Agreement and contract data

- 3.3 Minor Works Agreement (updated from edition 5.1 to 5.2) and contract data
- 3.4 Model Bill No.1 (Preliminaries) updated by the ASAQS preliminaries committee (with user notes)
- 3.5 Model Bill No.1 (Preliminaries) for minor works agreement created by the ASAQS preliminaries committee (with user notes)
- 3.6 Model project specific preliminaries for lump sum contracts (for both the PBA edition 6.2 and MWA edition 5.2) created by the ASAQS preliminaries committee (with user notes)