



PROFESSIONAL PRACTICE EXAMINATION : 20 APRIL 2016

PAPER 2: *This is an open book paper.*

Answer all questions

Total marks for this paper - **100 marks**

Time allowed for Paper 2 - **3 hours**

Pass mark for the examination - **55%** in either papers with an average of 60% for the two papers combined.

1. QUESTION 1

(20 Marks)

a. List 5 primary differences between the JBCC PBA and the MWA.

(10 marks)

<i>PRINCIPAL BUILDING AGREEMENT</i>	<i>MINOR WORKS</i>
<i>Provision for a principal agent and other agents</i>	<i>One Agent only</i>
<i>Provision for nominated and selected subcontractors</i>	<i>No provisions for nominated or selected subcontractors</i>
<i>Contractor liable for risk of loss of damage prior to practical completion</i>	<i>Employer liable for this risk</i>
<i>Contractor liable for risk of third party claims</i>	<i>Employer liable for risk of third party claims</i>
<i>Insurance taken out by either employer or contractor</i>	<i>Employer takes out insurances</i>
<i>Contract may be based on bills of quantities</i>	<i>No provision for bills of quantities</i>
<i>Contractor to provide construction guarantee</i>	<i>Provision of retention fund as alternative to construction guarantee</i>
<i>Time limit to notification of intention to claim revision of date for practical completion</i>	<i>No time limit</i>
<i>Interim payment certificates monthly</i>	<i>Interim payment certificates at agreed intervals</i>

b. A contractor chooses to exercise his lien over a property on which he is currently contracted to execute a building project.

- i. What is builder's lien? (3 marks)
- ii. Why, and on what grounds would the contractor exercise his lien? (2 marks)
- iii. Does the contractor have a right to exercise his lien? (3 marks)
- iv. How may the situation be remedied? (2 marks)

i. The builder's lien is the common law right of a builder, who is in possession of the fixed property of another and who has expended money or money's worth in effecting improvements to the owner's property, to remain in possession of

the property until the owner has paid the agreed price or a fair and reasonable price for the work. Such possession does not entitle him to sell the property if the owner refuses or fails to pay.

- ii. On the grounds that the contractor claims that has not been paid by the employer. If the contractor is insolvent it may be that his creditors are using the lien to attempt to recover their costs.*
- iii. Generally yes (given the right ito 25.12.2)unless excluded by specific provision within the contract. A waiver of lien by a bond holder is a prerequisite of the bond being granted but will not invalidate the lien the contractor is entitled to by the common law or the building contract unless specifically excluded.*
- iv. The employer would seek to lodge a payment guarantee for the amount of the monies outstanding / claimed by the contractor and which is the basis of the dispute in return for relinquishment of the builder's lien. This may have to be proved in court. The actual disputed amount would then form a basis for arbitration in terms of the contract. In order to avoid such a situation the employer is advised to ensure that the right to exercise the contractor's lien is specifically excluded from the building contract.*

2. QUESTION 2

(20 Marks)

List 4 available types or means of Dispute Resolution and then briefly discuss the primary differences between and objectives of these forms of Dispute Resolution.

*Mediation
Adjudication
Arbitration
Litigation*

Candidates will obtain 20 marks for listing the 4 types (4 marks) and sufficiently elaborating on its differences and objectives (16 marks), as given in the JBCC Agreements and Study Aid.

3. QUESTION 3

(25 Marks)

You are the Principal Agent on the following contract. You may select any name you wish for your own practice.

The JBCC PBA is in use and the following contract data is available. All amounts **exclude** VAT, unless otherwise stated:

- Employer >
D-Rive Auto Pty Ltd.
- Principal Contractor >

- Birch & Sons Pty Ltd
- Works identification >
New 3 storey car dealership, constructed of RC concrete and steel framework, infill brick work, external façade cladding, curtain walling, internal suspended ceilings, drywall partitioning, floor finishes as selected, sanitary ware and all related services and external works.
 - Site description >
Portion 91 of Erf 338, Pollak Park, Springs
 - Contract Sum >
R 97,851,672.49c excl VAT
 - Security selected >
Variable Construction Guarantee
 - CPAP adjustment was not selected. The tender price is therefore fixed.
 - The date on which Payment Certificates must be issued, is the 25th of each month.

On 17 March 2016, you received interim valuation no 6 from the QS, which contains the following information. All amounts **exclude** VAT:

- Value of work executed to date >
R 43,973,257.38c
- Value of Materials on Site >
R 3,368,913.73c
- Value of Materials off Site >
R 719,851.18c
- Authorised Adjustments to the Contract Value to date by way of omissions >
R -673,367.12c
- Previous Amount certified was >
R 35,387,479.27c

Questions:

Fill in the following provided JBCC PBA documents

- 3.1 Payment Certificate (15 marks)
3.2 Fill in the attached Recovery Statement (10 marks)

4. QUESTION 4

(15 Marks)

- a. Name the different forms of security as provided for in the JBCC **Principal Building Agreement** , ***including*** when the Contractor fails to provide 1 of two Construction Guarantees, ***and*** where the Contractor would require a deposit or some form of upfront payment, ***and*** that the Employer has to furnish (5 Marks)
- i. *Variable CG*
 - ii. *Fixed CG with Payment Reduction*

- iii. *Retention*
 - iv. *Advanced Payment Guarantee*
 - v. *Payment Guarantee*
- b. Briefly discuss the primary differences between each one of these forms of security. (5 Marks)
- i. *VCG = 10% of Contract Sum and valid until Final Payment*
 - ii. *FCG with PR = 5% of Contract Sum with 5% reduction of the value of each Payment Certificate, to a maximum of 5% of the Contract Sum*
 - iii. *Retention = An amount of 10% of the Contract Sum is withheld when Contractor fails to furnish i or ii above and reduced to 2.5% at Practical Completion and 0% at Final Completion*
 - iv. *APG = A payment guarantee furnished by the Contractor in favour of an advanced payment received towards goods to be supplied by the Contractor, that may be cancelled when the goods are paid for in a certification.*
 - v. *PG = A guarantee furnished by the Employer to the Contractor, for an agreed security amount, which must be renewed 20 days prior to expiration, failing which the Contractor may suspend the works 10 days after failure to renew by the Employer.*
- c. List 5 items of information that may be required in a Pre-Qualification Questionnaire (5 Marks)
- i. *Company details, such as legal entity registration details, BEE status, banking details, shareholding, etc;*
 - ii. *Tax details, such as VAT registration no, tax clearance certificates, etc;*
 - iii. *References and values from previous project employers and/or professionals for projects of the immediate past and distant past;*
 - iv. *Inquiries into time and budget overruns and reasons;*
 - v. *Capacity for current work, i.e. awaiting tenders to be awarded, current project work load, etc;*
 - vi. *Details of key personnel that will be actively engaged or employed on the project being tendered, i.e. contract managers, site supervisors, health and safety officers etc;*
 - vii. *Insurance details;*
 - viii. *Method statements on how the works will be executed;*
 - ix. *Potential subcontractors to be employed.*

5. QUESTION 5

(20 Marks)

Give 5 advantages and 5 disadvantages of the following forms of contract :

- a. A Contract with Bills of Quantities

(2 x 5 Marks)

b. A Lump Sum Contract

(2 x 5 Marks)

Any 5 advantages and 5 disadvantages from the Study Aid should warrant full marks.