



PROFESSIONAL PRACTICE EXAM – MARCH 2009

Instructions to Candidates:

- 1 All questions are to be answered

Where a question is in sections, each answer is to be clearly separated strictly in accordance

with the question numbering

Each section of a question is allocated a mark. Failure to correctly identify the section being answered could result in no mark awarded for that section

Answers should be clear, concise and well structured

- 2 Please take note of the marks allocated to each part of the question and moderate the amount of time you commit for each accordingly

PAPER 1: THE ARCHITECTURAL PROFESSIONAL AS A PRACTITIONER AND ARCHITECTURAL SERVICE TO THE CLIENT

3 Hours : This is a closed book examination

Question 1

- i) What is a Rational Design? (5 marks)
- ii) What is the function of the National Home Builders Registration Council (NHBRC)? (5 marks)
- iii) What is meant by Continuing Professional Development (CPD)? (5 marks)
- iv) What steps will you need to take to alter, convert or add on to an existing building that is more than 60 years old? (5 marks)

Answer question 1

- i) ***The National Building Regulations and Building Standards Act (Act 103 Of 1977) defines a rational design as being: “Any design involving a process of reasoning and calculation and may include any such design based on the use of a code of practice or other relevant technical document” This is borne out in the commentary regarding Deemed-To-Satisfy Rules within the SABS 0400 Code of Practice***
- ii) ***The NHBRC is an organ of state established to protect the interests of housing consumers and to regulate the homebuilding industry in terms of the Housing Consumer Protection Measures Act 1998 (Act No. 95 of 1998)***
- iii) ***Continuing Professional Development (CPD) is a process laid down by the SACAP , whereby persons registered in terms of the Architectural Professional Act are required to update their knowledge and experience of the practice of architecture in order to qualify themselves to renew their registration every five years in terms of section 23 of the Architectural Professions Act***

- iv) ***In terms of the National Heritage Resources Act 1999, a building which falls within the 60 year rule (Clause 34.1 of the Act) is subject to control of these regulations and application is to be made to the Provincial Heritage Resources Authority for prior approval of a site development plan and building plans***

Question 2

In terms of the SACAP Code of Professional Conduct published in Board Notice 28 of the Government Gazette on 19th March 2004, Rule 3 Management of Professional Work, states that a registered person shall not:

“undertake to perform work for remuneration unless the registered person has clearly set out the terms of the appointment, which must inter alia include the following:

- 2.1 List the six items specifically mentioned in this rule 3.1 which are to be included in the terms of appointment (10 marks)
- 2.2 Describe how you would set out the above terms of the appointment in an agreement with your client (10 marks)

Answer question 2.1

Rule 3 sets out the following items to be set out in terms of the appointment:

- 1. The scope of the work***
- 2. The allocation of responsibilities***
- 3. The limitation of responsibilities***
- 4. The fee or method of calculating it***
- 5. Provisions for termination and***
- 6. Details of professional indemnity insurance***

Answer question 2.2

- 1. Make use of the Procsa Client/Consultant Professional Services Agreement which encompasses all of the above requirements by completing the Schedule in Annexure A.***
- 2. Make use of the SAIA Client/Architect Agreement 2008 which encompasses all of the above requirements by completing the necessary sections of the document.***
- 3. Write a letter of appointment to the client carefully setting out each of the above requirements in sufficient detail to adequately cover the subject matter.***

Question 3

- 3.0 You have been appointed by your client to provide a full standard architectural service where you will be the consultant (architect), principal consultant and principal agent for the design and construction of a new small suburban shopping centre comprising ground floor shops, first floor offices and open parking areas. You recommend to your client that besides the appointment of a structural engineer, a quantity surveyor should also be appointed. The client is reluctant to pay further professional fees for the quantity surveyor and enquires whether such appointment would entail a reduction in your own fees. If not, what are the advantages of engaging a quantity surveyor that would justify the payment of additional fees?
- 3.1 What is your understanding of the terms:
i) consultant (architect)
ii) principal consultant
iii) principal agent (10 marks)
- 3.2 Reply to your client giving him a full but concise indication of the quantity surveyor's function and the benefits of employing him (15 marks)

Answer question 3

Question 3.1

- i) Consultant architect is the entity appointed to provide the professional architectural service in respect of the design and documentation for the project**
- ii) The principal consultant is the entity appointed by the client to administer and manage the services of the consultant and other consultants ie he is the leader and co-ordinator of the professional team**
- iii) The principal agent is the entity appointed by the client to manage and administer the contract**

Question 3.2

Architects are expected to be able to manage lump sum projects without a quantity surveyor and when appointed as the principal agent, should be able to assess whether the quantity surveyor is doing his job properly where a QS is appointed The functions of employing a quantity surveyor include but are not limited to the following:

- Preparing budgets and cost estimates at an early stage in the life of the project**
- Preparing feasibility studies for a project based on historical data**
- Preparing a cash flow analysis for the project**
- Preparing bills of quantities – either provisional or full bills depending on the type of project**
- Preparing updated cost estimates based on the design development and ultimately on the technical documentation prepared by the architect**
- Preparing tender documentation for procurement of tenders**
- Evaluating the tenders received in comparison with budgets and estimates**
- Valuing the cost of changes made to the project during the construction stage**
- Monitoring the costs of the project to maintain it within the client's budget**
- Providing the client with monthly cost reports**
- Providing the principal agent with valuations for the issuing of interim payment certificates**
- Preparing the final account with the contractor and negotiating adjustments to preliminaries where applicable**
- Providing the principal agent with the valuation for the final payment certificate based on the agreed final account**

Due to the training and experience that the quantity surveyor has, he is better trained than an architect to monitor and control the costs of the project

Question 4

You have been appointed as the principal consultant (leader of the professional team) for your client's new factory and offices. The building is to essentially be a steel structure, mechanically ventilated, provided with adequate lighting, a standby generator, access control, heavy duty loading and off - loading bays, client and staff parking and set in a landscaped environment Besides yourself as the architect, your professional team includes a quantity surveyor, structural engineer, electrical engineer, mechanical engineer and a landscape architect

Your client does not wish to appoint all of the consultants individually and insists that you engage them and quote a single fee for all of the necessary professional services – ie the client is looking for a "package deal"

Discuss the merits of this situation listing the advantages and disadvantages of the proposal from the point of view of:

- | | | |
|-----|---------------|------------|
| 4.1 | the client | (5 marks) |
| 4.2 | the architect | (10 marks) |

- 4.3 In the event of you agreeing to appoint the consultants as part of your team for this project, what form of agreement would you require all of the consultants to enter into with you (10 marks)

Answer question 4.1

From the client's point of view:

- **he has only one person with whom to communicate and to hold responsible for any error, omission or negligence on the part of any professional consultant**
- **only one client/ consultant professional services agreement to enter into**
- **only one fee and disbursement account to deal with on a monthly basis**
- **he can expect to pay a lesser fee than had he appointed each consultant separately**
- **he would expect to get a better and more efficient service than had he made separate appointments with each consultant**

Answer question 4.2

From the architect's point of view the advantages are:

- **he can expect to have better control over the other consultants – he has the power to fire a consultant who does not perform adequately**
- **he can claim a portion of the joint fee for fulfilling the role of team leader and team co-ordinator**

From the architect's point of view, the disadvantages are:

- **he carries a greater responsibility and risk of liability if any consultant is negligent**
- **he would need to negotiate a special professional indemnity insurance policy probably at a higher premium**
- **he carries the responsibility of paying fees to the consultants even when not paid by the client unless a "pay when paid" condition is included in their contractual agreement**
- **he will need to ensure that he is not transgressing the statutory regulations of the other professions**

Answer 4.3

- **The architect could enter into a "Joint Practice" Agreement with all of the other consultants to cover items such as each consultant's responsibilities, payment of fees and disbursements, professional indemnity insurance, confidentiality, time scales for production of designs and documentation, termination of the services of a consultant who does not perform adequately**
- **As an alternate to the above, the professional team could form a new consortium or joint venture practice and have a lawyer draw up a suitable agreement – this practice could be registered as a cc, or limited liability company**
- **Any other form of agreement to protect the interests of the consultant, but the architect in particular, as he carries the responsibility for the full professional team**

Question 5

Prior to inviting contractors to submit tenders for your client's new factory and offices, your client requests that you include the name of a contractor that you have never worked with, on the tender list

Describe the steps you would take to investigate the suitability of this contractor for the project prior to adding his name to the tender list (10 marks)

Answer question 5

In order to carry out a thorough investigation into the suitability of the contractor to be added to the list of tenderers to be invited to submit tenders, the architectural professional will need to establish the following:

- 1. obtain a list of recently completed projects of similar type and size from the contractor with the names of the building owners/developers**
- 2. arrange to visit these buildings to check the quality of finishes and discuss the performance of the contractor with the building owners**
- 3. obtain a list of architects and quantity surveyors who were involved in previous projects with this contractor and obtain references from these professionals**
- 4. obtain a list of subcontractors and suppliers that this contractor normally uses on his buildings and check out references**
- 5. obtain a list of projects currently under construction by this contractor and pay a visit to at least one of his building sites**
- 6. obtain a list of personnel together with cvs of key personnel whom this contractor intends using on your project**
- 7. discuss the contractor's current and future workload commitments with him**
- 8. obtain details of the contractor's insurance policies and his ability to provide a construction guarantee**
- 9. obtain details of the contractor's method of programming the works**
- 10. avoid getting involved with the details of the contractor's financial standing**

(total 100 marks)



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**PAPER 2 CONSTRUCTION LAW AND BUILDING CONTRACTS AND THE
RESOLUTION OF BUILDING DISPUTES**

3 Hours : This is an open book examination

Question 1

As principal agent administering a JBCC Principal Building Agreement, you receive an e-mail claim from the contractor on 13th March in which he states: "work on site was delayed by rain on Monday, Tuesday and Wednesday 9, 10 and 11 March and we hereby claim a three day revision of the date for practical completion"

In your response to the contractor, you are required to:

1.1 29.7.1 Grant, reduce or refuse the working days claimed

Set out your response to the contractor stating your reasons for your answer
(5 marks)

1.2 In the event that you agree to revise the date for practical completion as claimed by the contractor, would you make an adjustment to the contract value? - state reasons to support your decision
(5 marks)

Answer question 1

1.1 The contractor's claim should be refused as he has failed to submit his claim in terms of the contract as he has not complied with clauses 29.6.1, 29.6.2 and 29.6.3. The principal agent, in his reply, should state the reasons for refusing the claim in terms of 29.7.3

1.2 A rain delay falls into clause 29.1.1 – inclement weather – and entitles the contractor to a revision of the date for practical completion with no adjustment to the contract value

Question 2

Explain to your client the essential advantages of employing **selected** subcontractors in preference to **nominated** subcontractors
(10 marks)

Answer question 2

The main advantages of employing a selected subcontractor in preference to a nominated subcontractor are:

- **The main contractor is party to the selection (PBA clause 21)**
- **The main contractor is responsible for the selected subcontractor except in the case of insolvency of the selected subcontractor**
- **The main contractor is not entitled to a revision of the date for practical completion if delayed by a selected subcontractor**

Question 3

As principal agent administering a JBCC Principal Building Agreement, you receive a claim from the contractor for a revision of the date for practical completion for delays caused by the following circumstances:

1. The roof cladding selected subcontractor arrived on site on Monday 9th March to start work, but was unable to do any work owing to the lack of an essential drawing. This drawing was delivered by the architect late in the afternoon on Thursday 12th March
2. The subcontractor had hung around doing nothing for two days, and on Wednesday 11th March went to work on another site, and returned on Tuesday 17th March
3. When the subcontractor returned to site, he found that the structural steel subcontractor was busy replacing some of the purlins with heavier section purlins on the instruction of the structural engineer, who needed to suspend certain air-conditioning equipment from them. This work, which had started on Thursday 12th March, was completed on the afternoon of Thursday 19th March, enabling the roof subcontractor to start work

The contractor claims 4 working days for the first circumstance, 9 for the second and 8 for the third, totaling 21 working days, and he also claims time-related preliminaries

Assuming the contractor has complied with all of the requirements in clause 29.4 regarding timeous notification, and that the roof cladding was on the critical path of the program, what award should you make?

(20 marks)

Answer question 3

This question deals with several circumstances, some of which, to some extent, are concurrent

In the first circumstance, the non-availability of information, it is clear that it must have caused a delay of four days. In terms of 29.4.2, the contractor would be entitled to an award of four days together with time related preliminaries

In the second circumstance the absence of the selected subcontractor from the site on the 11th and 12th March would have caused no delay as the necessary information had not yet been received. However, from the 13th to the 19th March his absence from the site caused a delay. The contractor is, however, not entitled to an extension of time in this circumstance as the absence of the selected subcontractor is a default by the selected subcontractor that does not entitle the contractor to additional time

In the third circumstance, the roofing subcontractor was back on site but was unable to do any work because the roof purlins were being replaced. This delay is from 17th to 19th March – both days inclusive – and amounts to three days. In terms of clause 29.2.3 the contractor is entitled to an award of three days with time related preliminaries

The contractor is entitled to an adjustment of the date for practical completion of seven working days (four in respect of the non-availability of information and three in respect of delays due to the replacement of the roof purlins) and time related preliminaries in respect of both circumstances

Question 4

In a contract in which the agreement between the employer and the contractor is the JBCC Principal Building Agreement, what is the contractual position in each of the following separate situations, and what action, if any, should be taken and who should take it?:

- 4.1 Several toilet flush valves, which were specified by the maker's name, and which appeared to be satisfactory when installed, develop faults due to defective manufacture. The faults become apparent before practical completion and the principal agent instructs the contractor to replace them at his own cost. The contractor refuses, saying that he is not responsible for the faults (10 marks)
- 4.2 In a contract for additions to an existing house, a quantity of new ceramic tiles supplied to the contractor by the employer and stored in the new garage built on the site as part of the additions, are stolen prior to practical completion. The contractor and employer argue as to which of them is responsible for the cost of replacing the tiles (10 marks)
- 4.3 On the practical completion list issued to the contractor, the principal agent instructed the contractor to replace certain flush doors which he considers to be excessively warped.
The contractor satisfactorily completes all the other items on the list but refuses to replace the doors, alleging that the principal agent is being unreasonable in condemning them. He demands that the principal agent issues the certificate of practical completion. The principal agent refuses to do so until the doors have been replaced and warns the contractor that penalties for non-completion will be claimed (10 marks)

Answer question 4.1

Latent defects in materials specified by trade name is a works risk exception and in terms of clause 8.5.10, the contractor is not liable. The contractor must nevertheless carry out the contract instruction to replace the valves but not at his own cost and must be paid to do so. The right of action against the supplier/manufacturer is ceded by the contractor to the employer in this clause

Answer question 4.2

The contractor is fully responsible for the works up to practical completion including materials supplied by the employer –clause 8.3.2. As the ceramic tiles were stored in the new garage this was obviously part of the works (not the existing building) The contractor is responsible for the replacement of the tiles at no cost to the employer and may endeavour to recover from the risk insurers – the contractor would need to report the theft to the police in order to obtain a case number for insurance purposes. Clause 42.3 of the schedule indicates which party arranged the insurance and which party is liable for the payment of the deductible – read with clause 10.4

The employer indemnifies the contractor against loss or damage Clause 9.2 and physical loss or damage to an existing structure and the contents thereof in respect of which the agreement is for alterations or additions to an existing structure clause 9.2.7

Answer question 4.3

The certificate of practical completion has not yet been issued – in terms of 24.2, the principal agent shall forthwith identify the items on the practical completion list that are not yet completed and inform the contractor thereof.

In terms of clause 17.0 the principal agent may issue a contract instruction (17.1.3 and 17.1.4) for the removal and replacement of the defective items and 17.1.18 (list for practical completion)

Should the contractor fail to proceed with due diligence with a contract instruction, the principal agent may notify the contractor to proceed within 5 working days from receipt of such notice. Without further notice, on default by the contractor, the employer may employ other parties to give effect to such contract instruction in addition to any other rights that the employer may have. The employer may recover expense and loss (33.0) resulting from such employment (17.4)

Question 5

Clause 40.0 of the Principal Building Agreement makes provision for disputes arising out of the contract to be settled by adjudication, arbitration and/or mediation

5.1 Outline the differences between adjudication and arbitration (15 marks)

Answer question 5.1

Adjudication:

Adjudication is a relatively new form of dispute resolution and is not a formal legal procedure

The adjudicator is appointed by the parties The adjudication process shall be carried out in terms of the Rules for Adjudication published by the JBCC

Adjudication is a quick and inexpensive method of resolving a dispute during the construction period

The Adjudicator's decision shall be binding on the parties who shall give effect to it without delay unless and until it is subsequently revised by an arbitrator

The adjudicator's decision cannot be made an award of court

Arbitration:

Arbitration is a formal legal procedure in terms of the Arbitration Act 42 of 1965

The arbitrator may be appointed by the parties, may be appointed by a third party so named in the building contract or may be selected from a list of three names submitted by the party named in the building contract

The arbitration procedure is determined by the parties and is usually conducted in terms of the Standard Procedure Rules or the Summary Procedure Rules for the Conduct of Arbitrations of the Association of Arbitrators

The arbitrator acts as judge and can only take cognizance of the evidence placed before him

Legal representation may be permitted if so agreed between the parties.

The arbitrator's award is final and binding upon the parties and can only be overturned by proving bias or misconduct on the part of the arbitrator.

The arbitrator's award can be made an order of court

The arbitrator is bound to apply the rules of natural justice

5.2 State your reasons why arbitration is the preferred method of dispute resolution over litigation in private sector building contracts (15 marks)

Answer question 5.2

In an arbitration the arbitrator is chosen by the parties whereas in litigation the parties have to rely on a judge appointed by the courts who may not be versed in building contracts

The parties to an arbitration are consulted on the arbitration procedures, the date and venue for the hearing whereas in litigation they have no say in these matters
Arbitration is, in many cases, a quicker and less costly form of dispute resolution than Litigation
The parties to an arbitration need to take a decision at an early stage whether or not they wish to apply the appeal rule whereas in litigation the losing party may take the matter on appeal

(total 100 marks)