



PROFESSIONAL PRACTICE EXAM – SEPTEMBER 2009

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

Question 1:

In terms of the SACAP Code of Conduct what is meant by:

- i) “a member of a closely allied profession” (give three examples) (3 marks)
- ii) “a voluntary association” (give two examples) (3 marks)
- iii) “continuing professional development (CPD)” (2 marks)
- iv) “identification of work” (2 marks)

Answer question 1

- i) **A member of a closely allied profession is one who is registered in terms of:**
 - **Engineering Profession Act No 46 of 2000**
 - **Landscape Architectural Profession Act No 45 of 2000**
 - **Project and Construction Management Professions Act No 47 of 2000**
 - **Quantity Surveying Profession Act No 49 of 2000**
 - **Planning Profession Act No 36 of 2002**

All of which are members of the Council for the Built Environment (CBE)

- ii) **A Voluntary Association is any association of persons whose interests coincide with those of SACAP and which is recognized as a voluntary association by SACAP in terms of section 25 of the Architectural Professions Act.**

Examples are the South African Institute of Architects (SAIA), the Gauteng Institute for Architecture (GIFA), the South African Institute of Architectural Technologists (SAIAT), the Pretoria Institute for Architects (PIA)

- iii) **Continuing Professional Development (CPD) is a process laid down by the SACAP, whereby persons registered in terms of the Architectural Professions 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**

Identification of work is the identification by SACAP of various types of architectural project which may be undertaken by members of the various categories of registration under the Architectural Professions Act

Question 2:

In terms of the SACAP Code of Professional Conduct published in Board Notice 28 of 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 Set out the terms of your appointment to conform to the requirements of the above Rule
(10 marks)
- 2.2 Describe which standard client/consultant document you would use to confirm your agreement with your client in place of setting out the requirements in a letter and give reasons why you would use the document you have chosen
(10 marks)

Answer question 2.1

Rule 3 sets out the following items to be set out in terms of the appointment which should be incorporated in a letter of 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 & B
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

Question 3

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 refurbishment and conversion of an existing eight storey office building into residential apartments for the rental market. The building has existing ground floor retail tenants and two basement levels of parking

You recommend to your client that besides the appointment of a structural engineer, a quantity surveyor and an electrical and mechanical engineer, that a wet services consultant be appointed to design the plumbing installation.

The client is reluctant to pay further professional fees for the wet services consultant and says that, in any case, you as the architect should be capable of designing the plumbing installation yourself. Your client further enquires whether such appointment would entail a reduction in your own fees as the architect

- 3.1 Set out what you understand your role to be when appointed as the principal consultant
(10 marks)
- 3.2 Reply to your client giving him a full but concise indication of the role of the wet services consultant on the project
(5 marks)
- 3.3 Set out your reasons why you would not accept the responsibility for designing the plumbing installation
(5 marks)

- 3.4 Would you accede to your clients request that you reduce your professional fees should he appoint a wet services consultant to design the plumbing installation and if not state your reasons?

(5 marks)

Answer question 3

Question 3.1

- i) **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**

As principal consultant I would be responsible for:

- **Facilitating the development of a clear project brief**
- **Establishing the procurement policy for the project**
- **Assisting the client in the appointment of other consultants required for the project**
- **Defining the consultant's scope of work and scope of services**
- **Arranging and chairing the professional team meetings and recording the minutes of such meetings**
- **Ensuring that all of the other consultants understand the client's brief**
- **Developing the documentation and provisional construction program with the other consultants**
- **Obtaining the client's approval for the various stages of work**
- **Reporting to the client on progress and budgetary matters**
- **Ensuring the requirement for meeting statutory consents and approvals**

Question 3.2

Architects are expected to be able to design simple plumbing installations in low rise buildings

When it comes to medium to high rise buildings, the services of a qualified and experienced wet services engineer will be required to:

- **ensure that the plumbing installation is designed in accordance with building standards and regulations**
- **prepare budgets and cost estimates for the wet services at an early stage in the life of the project and are monitor costs throughout**
- **prepare tender documentation for procurement of plumbing tenders**
- **evaluate the tenders received in comparison with budgets and estimates and recommend the appointment of a suitable plumbing contractor for the works**
- **monitor the plumbing installation to ensure compliance with the design**
- **obtain the necessary local authority approvals and compliance certificates**
- **inspect the installation on completion and provide the principal agent with practical, works and final completion lists**
- **ensure that water pressure, water heating and storage are correctly designed and installed**

Question 3.3

Due to the training and experience that the wet services engineer has, he is better trained than an architect to design the wet services installation.

I would not accept the responsibility for the design of the wet services for this type of building as, in the event of a malfunction of the installation, I would be held responsible for the cost of rectification and my professional indemnity insurance would not cover this risk as I would be doing work for which I have not been trained

Question 3.4

**This would largely depend on the fee that I have negotiated with my client for the service that I am to provide as the architect, principal consultant and principal agent
Generally speaking, I would convince my client that the wet services is a specialized engineering service and that this consultant should be appointed and paid for as another member of the professional team**

Question 4

You have been appointed as the principal consultant (leader of the professional team), consultant (architect) and principal agent for converting your client's existing office building into residential apartments. The building is a high rise structure, requires extensive electrical reticulation, new lifts, a standby generator, access control, smoke detection system, extensive plumbing and new brick dividing walls which will impose loadings on the floor slabs not previously there.

Besides yourself as the architect, your professional team includes a quantity surveyor, structural engineer, electrical engineer, mechanical engineer, wet services engineer and fire consultant.

Your client does not wish to appoint all of the consultants individually and insists that you engage them and to 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 (10 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:

Advantages:

- **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 would 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**

Disadvantages:

- **he has no say in the selection of the other consultants**
- **he has to rely on the integrity of the architect for the conduct of the other consultants**

Answer question 4.2

From the architect's point of view:

Advantages:

- he has the ability of selecting consultants with whom he has worked previously and knows their capabilities
- 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 (principal consultant)

Disadvantages:

- 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 the refurbishment and conversion of your client’s existing office building into residential apartments, your client requests that you include the name of a contractor on the tender list that you have never worked with before

Describe the steps you would take to investigate the suitability of this contractor for this type of specialized project prior to adding his name to the tender list.

(15 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 contact details 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 and how regularly he pays his accounts

- 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 contractors insurance policies and his ability to provide a construction guarantee
- 9 obtain details of the contractor's method of programming the works
- 10 obtain a list of subcontractors that this contractor has employed on previous projects and ascertain from them how he handles his subcontractors with regard to programming their work with his own, how regularly he meets his payment obligations to them and how he generally manages the contract

(total 100 marks)



**PAPER 2: CONSTRUCTIONS LAW AND BUILDING CONTRACTS and THE
RESOLUTION OF BUILDING DISPUTES**

Time Allowed:

3 hours

Question 1:

You receive the JBCC Minor Works Agreement Contract Data CE and notice that the lowest tenderer has selected to provide a Variable Construction Guarantee under 2.1.1

When you discuss the tender results with your client and advise him that the lowest tenderer has selected to provide a Variable Construction Guarantee, your client says he would prefer to withhold retention as it is better to “have the money” rather than a paper guarantee

- 1.1 Explain to your client the differences between a Variable Construction Guarantee and Retention and why he would be better off with the guarantee rather than withholding Retention (10 marks)
- 1.2 What steps may the Employer take should the Contractor fail to provide the Variable Construction Guarantee within the time period stipulated in the Agreement? (5 marks)

Answer question 1

- 1.1 The Variable Construction Guarantee is to be provided by the contractor within 21 calendar days of acceptance of the tender. The guarantee shall be issued by a guarantor to the reasonable approval of the employer**

The value of the guarantee commences at 6% of the contract sum and does not reduce in value until the achievement of practical completion when it reduces to 4% of the contract sum

At final completion it reduces to 2% where it remains until the final certificate has been settled

Retention, on the other hand, is deducted at the rate of 8% of the value of each interim payment certificate to a limit of 4% of the contract sum which is held to the date of practical completion

After the certification of practical completion, the retention reduces to 2% until the date of issue of the final payment certificate

From the afore-going, it is evident that the employer has immediate cover of 6% of the contract value from day one of the contract whereas the retention commences at zero and slowly builds up to a maximum of 4% as the work progresses

The employer also has the right to approve the guarantor providing the guarantee

- 1.2 In the event of the contractor failing to provide the Variable Construction Guarantee within the 21 calendar day period of acceptance of the tender, the employer, in his sole discretion, shall either apply the security provision [2.3]**

ie deduct retention or terminate the agreement [15.0] where the site has not yet been handed over

Question 2

Your building tenders for the conversion of your client's existing multi story office building into residential apartments close at 12 noon on 30 September. In your tender enquiry document you have provided **budgetary allowances** of R1 200 000,00 for the supply and installation of two new passenger lifts, R2 850 000,00 for the electrical installation and R250 000,00 for the access control system installation

Your client insists that you call for tenders for these subcontracts on a **selected** subcontract basis and that these tenders are to close on the same date as the building tenders

How would you handle this situation within the terms of the JBCC Principal Building Agreement? State reasons for your answer

(15 marks)

Answer question 2

The problem here is that in terms of 21.0 of the JBCC Principal Building Agreement, the principal agent shall

- 21.1.1 prepare tender documents in conformity with the n/s agreement and this agreement for work intended to be executed by a selected subcontractor. Such preparation shall be carried out in consultation with and to the reasonable approval of the contractor, and**
- at 21.1.2 call for tenders from a list of tenderers agreed between the contractor and the principal agent, and**
- at 21.1.3 in consultation with the contractor, choose the successful tenderer to be appointed as a selected subcontractor in terms of the n/s agreement and other tender requirements,**

**It will therefore be impossible to meet the client's requirements without contravening the above contractual requirements – candidates need to show that they have an understanding of the contractor's involvement in the selection process as this differs considerably from the appointment of a nominated subcontractor
The principal contractor takes full responsibility for the selected subcontractor and it is therefore essential that he is party to the selection process**

I would therefore advise my client of the above conditions and only finalise the tender documentation, tender list and call for tenders for the selected subcontractor once the principal contractor has been approved

Question 3

As the principal agent you are required to issue interim payment certificate number 10 on behalf of the employer, Nu Home Property Developers (Pty) Ltd to the contractor, Smart Contracting cc for the refurbishment and conversion of an existing office building into residential apartments on stand 1520, Johannesburg

The contract sum, including vat is R18 950 000

Practical completion has been achieved and you have issued the certificate of practical completion – the contractor failed to bring the works to practical completion on the contractual date for practical completion which was only achieved 25 calendar days later than the contractual date

The employer has elected to levy the penalty amount of R5 000, per calendar day as provided for in the contract data

Adjustment to the contract value amounts to R450 000 and the tender was for a **fixed** contract sum. The quantity surveyor's current valuation excluding vat is R16 800 000, the value of materials on site is nil and there is no payment for materials off site
The contractor provided a variable construction guarantee

The previous amount certified excluding vat was R15 250 000

Expense and loss to be recovered in this certificate as per the Recovery Statement is an amount of R35 000 paid by the employer on behalf of the contractor for works insurance, the recoupment of an advance payment of R140 000,00 and penalties as above

3.1 Complete the RECOVERY STATEMENT
Recovery Statement annexed hereto as Annexure 3.1 (5 marks)

3.2 Complete interim PAYMENT CERTIFICATE no 10 including columns A, B C and D
Payment Certificate annexed as Annexure 3.2 (20 marks)

See annexure 3.1 and 3.2

Question 4

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

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

4.2 State your reasons why arbitration is the preferred method of dispute resolution over litigation in private sector building contracts (10 marks)

Answer question 4.1

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

Answer question 4.2

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

Question 5

Clause 17.1 of the JBCC Principal Building Agreement makes provision for the Principal Agent to issue contract instructions to the contractor regarding items listed as 17.1.1 to 17.1.20

You are required to issue a contract instruction for the appointment of a nominated subcontractor (17.1.11) where the following applies:

Contract:	refurbishment of existing building
Contractor:	Smart Contracting cc
The works:	new residential apartments : electrical installation
The site:	stand 1520 Johannesburg
Budgetary allowance:	R2 850 000,00 excluding vat
Selected subcontractor:	Britespark Electrical cc
Subcontract tender amount:	R2 450 000,00 excluding vat
n/s agreement:	JBCC n/s agreement

1.1 Set out in draft form your proposal for this contract instruction taking cognizance of the above information

(10 marks)

5.2 After receiving your instruction to appoint Britespark Electrical cc as a nominated subcontractor, the principal contractor notifies you in terms of clause 20.2, that he refuses to appoint this subcontractor as he does not believe this subcontractor will be able to complete the electrical installation within the time period agreed for practical completion

5.2.1 How would you handle this situation?

(5 marks)

5.2.2 What alternate is open to you as the principal agent?

(5 marks)

Answer question 5.1

See attached copy of contract instruction – candidates should show an understanding of how to set out a contract instruction

Answer question 5.2

In terms of clause 20.2 the contractor may refuse to appoint a nominated subcontractor against whom he makes a reasonable objection [20.2.1] or who refuses to enter into a subcontract in terms of the n/s agreement and other tender requirements [20.2.2] or who is unable to provide security in terms of the n/s agreement [20.2.3]

I would request the contractor to give a full explanation as to his reasons for refusing to appoint this nominated subcontractor and thereafter arrange a meeting with the contractor and subcontractor to try and resolve the matter, failing which the alternates in question 5.2.2 would need to be considered

Answer to question 5.2.2

Depending on the nature of the contractor's reasons for refusing to appoint the nominated subcontractor, the alternates would be:

If the refusal is due to the subcontractor's inability to meet the contractor's program and thereby increase the contractor's risk in regard to penalties, the nomination could be changed to appoint the subcontractor as a direct contractor in which the employer carries the risk

If the refusal is due to the subcontractor not being able to provide the security required, another nominated subcontractor is to be appointed [20.3]

(total 100 marks)