



Specific Preliminaries for use with the 2018 JBCC MWA edition 5.2

PROJECT SPECIFIC PRELIMINARIES

Disclaimer

While the ASAQS aims to ensure that its publications represent best practice, the ASAQS does not accept or assume any liability or responsibility for any events or consequences which derive from the use of the Project Specific Preliminaries. Such document is not exhaustive and is therefore only intended to provide general guidance to those who wish to make use of it. This publication is provided "as is" without warranty of any kind, either expressed or implied including but without limitation to warranties of merchantability, fitness for a particular purpose and non-infringement

User note

Delete the above "Disclaimer" when preparing this Project Specific Preliminaries for tender or contract purposes

Hereinafter edit all text, etc but even more specifically text within "?...?" to ensure that such text applies to the specific building agreement

Note that the dotted grid lines in this document will cease to be visible on printing

BUILDING AGREEMENT AND PRELIMINARIES

The **JBCC** Minor Works Agreement (Edition 5.2 – May 2018) prepared by the Joint Building Contracts Committee shall be the applicable building agreement, amended as hereinafter described

The **JBCC** Minor Works Agreement **contract data** form an integral part of this **agreement**

The **JBCC** General Preliminaries (May 2018) published by the Joint Building Contracts Committee for use with the **JBCC** Minor Works Agreement (Edition 5.2 – May 2018) shall be deemed to be incorporated in this project specific preliminaries, amended as hereinafter described

The **contractor** is deemed to have referred to the abovementioned documents for the full intent and meaning of each clause

The relevant clauses in the abovementioned documents are hereinafter referred to by clause number and heading only

Where standard clauses or alternatives are not entirely applicable to this **agreement** such amendments, modifications, corrections or supplements as will apply are given under each relevant clause heading and such amendments, modifications, corrections or supplements shall take precedence notwithstanding anything to the contrary contained in the abovementioned documents

User note

Insert, suitably edited, the following clauses where the General Preambles for Trades 2017 published by the Association of South African Quantity Surveyors is applicable

PREAMBLES FOR TRADES

The General Preambles for Trades 2017 published by the Association of South African Quantity Surveyors shall be deemed to be incorporated in this Project Specific Preliminaries

Supplementary preambles and/or specifications are incorporated in this Project Specific Preliminaries to satisfy the requirements of this project. Such supplementary preambles and/or specifications shall take precedence over the provisions of the General Preambles

The **contract sum** shall take account of and include where applicable for all of the obligations, requirements and specifications given in the General Preambles and in any supplementary preambles and/or specifications

User note

Insert, suitably edited, the following clause where a project specific specification is applicable

? SPECIFICATION

A project specific specification is incorporated in this **agreement** to satisfy the requirements of the project

The **contract sum** shall take account of and include for all the obligations and requirements stipulated in the project specific specifications ?

User note

Insert the following clause if a schedule of rates is provided

? SCHEDULE OF RATES

The schedule of rates (Annexure ? of this contract document) shall only be utilised to determine the **contract value** of **contract instructions** and for no other purpose. The **contractor** shall price the items in the schedule of rates and submit such with the tender

The items in the schedule of rates utilise abbreviated descriptions. It is the intention that the abbreviated descriptions be fully described when read with the applicable measuring system and the relevant preambles and/or specifications. However, should the full intent and meaning of any description not be clear, the **contractor** shall, before submission of his tender, call for a written directive from the **principal agent**, failing which it shall be assumed that the **contractor** has allowed in his pricing for materials and workmanship in terms of international best practice

STRUCTURE OF THIS PRELIMINARIES

Section A : Amendments, modifications, corrections or supplements to the aforementioned **JBCC** Minor Works Agreement

Section B : Amendments, modifications, corrections or supplements to the aforementioned **JBCC** General Preliminaries

Section C : Any special clauses to meet the particular circumstances of the project

Section D : Monetary allowances

SECTION A : MINOR WORKS AGREEMENT

1. Clause 1.0 - Definitions and interpretation

Contract sum

The **contract sum** to include, unless otherwise stated, for all materials, fabrication, conveyance and delivery, unloading, storing, unpacking, hoisting, labour, setting, fitting and fixing in position, cutting and waste (except where to be measured in accordance with the standard system of measurement), patterns, models and templates, plant, temporary works, returning of packaging, duties, taxes (other than Value Added Tax), imposts, establishment charges, overheads, profit and all other obligations arising out of this **agreement**. Value Added Tax (VAT) is to be separately stated in the **contract data**

The **contract sum** shall include for all **construction equipment**, temporary works, services and other items and shall include for the supply, maintenance, operating cost and subsequent removal and making good as necessary

Legal status of contractor

If the **contractor** constitutes a joint venture, consortium or other unincorporated grouping of two or more persons then:

1. These persons are deemed to be jointly and severally liable to the **employer** for the performance of this **agreement**
2. These persons shall notify the **employer** of their leader who has assigned authority to bind the **contractor** and each of these persons
3. The **contractor** shall not alter its composition or legal status without the prior written consent of the **employer**

2. Clause 2.0 - **Law**, regulations and **notices**

User note

Insert the following for residential developments only

The cost to the employer of the NHBRC levies mentioned below is to be conveyed to the employer in order to present an overall building cost

? **NHBRC levies**

The **employer** shall allow for and pay any levies required by the National Home Builders Registration Council (NHBRC). The **contractor** warrants that he is registered and will maintain registration with the NHBRC for the duration of this **agreement** [2.1] ?

3. Clause 4.0 - Documents

Value Added Tax

Provision is made in the **contract data** for inclusion in the **contract sum** of Value Added Tax (VAT)

User note

Insert the following where applicable

? **Electronic issue of drawings**

All drawings for this project will be issued electronically and the **contractor** shall be deemed to have received such drawings on the date that such drawings have been dispatched electronically [4.5] ?

4. Clause 5.0 - **Employer's agents**

User note

Delegated authority may be dealt with in B 5.0 of the contract data. Insert in the contract data "Refer to the Project Specific Preliminaries" should it be dealt with in this Project Specific Preliminaries

? **Delegated authority**

The authority of the **principal agent** to issue **contract instructions** [14.1] and perform duties for specific aspects of the **works** is delegated to **agents** as follows [5.2]. This does not preclude the **principal agent** to also issue such **contract instructions** ?

User note

The delegated authority for the architect (ie duties and contract instructions) is stated hereunder. Delete if not applicable. Add other consultants as may be necessary

? 1. Architect

Note that the contract instructions are selected from those listed in clause 14.1 of the JBCC MWA

1.1 Duties [5.2] :

The architect is responsible for the architectural design, functional design and quality inspection of the **works**

1.2 **Contract instructions** [5.2; 14.1] :

1.2.1 Rectification of discrepancies, errors in descriptions or quantity or omissions of items in this **agreement** other than in the **JBCC Minor Works Agreement**

1.2.2 Alteration to design, quality or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the **works**

1.2.3 The **site** [12.0]

1.2.4 Compliance with the **law**, regulations and bylaws [2.1]

1.2.5 Provision and testing of samples of **materials and goods** and/or finishes or assemblies of elements of the **works**

- 1.2.6 Opening up of work for inspection, removal or re-execution
- 1.2.7 Removal or re-execution of work
- 1.2.8 Removal or substitution of any **materials and goods**
- 1.2.9 Protection of the **works**
- 1.2.10 Making good physical loss and repairing damage to the **works** [17.2.2]
- 1.2.11 Rectification of **defects** [16.4; 16.8]
- 1.2.12 A **list for practical completion** specifying outstanding or defective work to be rectified to achieve **practical completion** and a **list for completion** and a **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
- 1.2.13 Expenditure of **employer allowances** and/or **prime cost amounts**
- 1.2.14 Work by **direct contractors** [13.0]
- 1.2.15 On suspension or termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [21.6.1] ?

5. Clause 9.0 - **Securities**

User note

If it is deemed advisable, the extent of any guarantee for payment may be stated and whether it is required of the contractor to waive his lien. Edit the following clause

? **Guarantee for payment**

The **employer** shall provide to the **contractor** a **guarantee for payment** in the amount of ?.....Rand (R.....) ?. The **contractor** shall consequently waive his lien or right of continuing possession of the **works** [9.2] ?

User note

Where it is expected of the contractor to waive his lien in terms of clause 11.10, the waiver of lien may be extended to subcontracts as follows:

? **Extension of waiver of lien**

The **contractor** shall ensure that a waiver of lien or right of continuing possession of the **works** is included in all subcontracts and that the **works** executed on the **site** are kept free of all such liens and other encumbrances at all times [9.2] ?

6. Clause 11.0 - Obligations of the **contractor**

? **Office accommodation**

The **contractor** shall provide, maintain and remove on **practical completion** air conditioned office accommodation with suitable tables and chairs for meetings to be held on the **site**. Such offices shall be kept clean and fit for use at all times [11.2.5] ?

? **Notice board**

The **contractor** shall erect in a position approved by the **principal agent**, maintain and remove on **practical completion** a notice board recommended by the South African Institute of Architects and as approved by the **principal agent** listing the names and logos of the **employer**, the **contractor**, and the professional consultants. No **subcontractor** or supplier notice boards may be erected unless permission is granted by the **principal agent** for such notice boards to be erected [11.2.5] ?

Statutory and other notices

The **contractor** shall submit and/or comply with all statutory and other notices that may be required by any local or other authority in order not to cause any delay to the commencement of the **works** by the **contractor**. The **contractor** shall pay all deposits or fees in this regard

It is, however, specifically recorded that the **employer** shall be responsible for the timeous approval of building plans by any local or other authorities and the payment of any fees or charges related thereto

7. **Clause 13.0 - Direct contractors**

Attendance on direct contractors

In respect of **direct contractors** the **contractor** shall:

1. Designate an area for the **direct contractor** to establish a temporary office and workshop and storage of equipment and materials
2. Allow the use of personnel welfare facilities, where provided
3. Provide water, lighting and single phase electric power to a position within 50m of the place where the direct contract work is to be carried out, other than fuel or power for commissioning of any installation
4. Permit the **direct contractor** to use erected scaffolding, hoisting facilities, etc provided by the **contractor**, in common with others having the like right, while it remains erected on the **site** [13.1]

8. **Clause 14.0 - Contract instructions**

? **Site instructions**

Instructions issued on **site** are to be recorded in a **site** instruction book which is to be supplied and maintained on **site** by the **contractor** ?

9. **Clause 17.0 - Revision of date for practical completion**

Substitution of materials and goods

The removal or substitution of any **materials and goods** which do not conform to the specification or the **contract drawings** shall not constitute grounds for the extension of the **construction period** nor for the adjustment of the **contract value** [14.1.8; 17.1 & 2]

10. Clause 19.0 - Payment

Prices submitted

Where prices are submitted by the **contractor** or **subcontractor** during the progress of the **works** in respect of **contract instructions** or in regard to a claim under the terms of this **agreement** and notwithstanding the fact that such prices may be used in an interim **payment certificate**, there is to be no presumption of acceptance. Should the **principal agent** wish to accept any such prices prior to the issue of the **certificate of final completion**, it shall be in writing

11. Clause 20.0 - Adjustment of the **contract value** and **final account**

Cost of claims

All costs incurred by the **contractor** in the preparation of claims shall be borne by the **contractor**. This provision shall not preclude an adjudicator or an arbitrator appointed in terms of this **agreement** [22.5 & 6] from making a determination on costs

12. **Agreement**

The required information of the **parties** and the accepted **contract sum** shall be inserted in the **agreement** for signature of the **agreement** by the **parties**

13. **Contract data**

User note

Insert under the above headings, with sub-headings, any amendments, modifications, corrections or supplements to the contract data

Tenderer's selections

Before submission of his tender the **contractor** is to complete the tenderer's selections in the **contract data**

User note

All information for the above requires consultation with the contractor. The principal agent should not pre-select any of the alternatives available to the contractor

SECTION B : GENERAL PRELIMINARIES

User note

Amendments, modifications, corrections or supplements to the General Preliminaries in Section B should be recorded in the contract data

Should it be necessary to expand on any of the General Preliminaries clauses, the user should list the appropriate General Preliminaries clause number and heading and insert under a suitable sub-heading as may be necessary

14. Clause 4.2 - Enclosure of the **works**

User note

Describe any specific hoarding requirements, other than already described in clause 4.2 or in the contract data

15. Clause 9.1 - Responsibility for **prime cost amounts**

? The **contractor** shall allow in the **contract sum** for the stated **prime cost amounts** and for overheads and profit and for taking delivery, unloading, checking against invoices and/or delivery notes, getting in, unpacking, storing, hoisting and fixing of such **materials and goods** ?

16. Clause 10.1 - General attendance

This clause refers to nominated and selected subcontractors and does therefore not apply to the **JBCC MWA**

17. Clause 10.2 - Special attendance

This clause refers to nominated and selected subcontractors and does therefore not apply to the **JBCC MWA**

18. Clause 11.5 - Disturbance

User note

The following clause may be used should "disturbance" [11.5] need to be extended

Disturbance

? All work is to be carried out in such a manner as to cause no unacceptable or unreasonable dust, noise, vibrations, nuisance, inconvenience, annoyance and the like to the public, others, other properties and traffic in so far as they exceed the permissible limitations set by government legislation or by the local authority. Any delays, stoppages and the like arising from or in order to comply with the above will not constitute grounds for an adjustment to the **construction period** or **contract value** whatsoever ?

19. Clause 11.6 - Environmental disturbance

? **Controlling all forms of pollution**

The **contractor** shall be responsible for and take all precautions in controlling by whatever means necessary all forms of pollution emanating from the **site** during the **construction period** due inter alia to noise, artificial light, wind-blown sand, dust, deposits of mud, etc

The **contractor** is to ensure that all roads which border the **site** and are used by the **contractor** during the execution of the **works** are kept clean and free of any dirt or debris caused by the execution of the **works** ?

User note

Insert the following clause if an environmental management plan (EMP) is available and insert the EMP in an annexure

? Environmental management plan

The **employer** has prepared an environmental management plan (EMP) (refer to Annexure ? for a copy of the relevant plan). The **contractor** shall allow in the **contract sum** for compliance with all the requirements of such EMP ?

SECTION C : SPECIFIC PRELIMINARIES

User note

Users shall avoid inserting in Section C items which may be construed as amending, modifying, correcting or supplementing the provisions of the JBCC Minor Works Agreement. Such amendments, modifications, corrections or supplements should be kept to the absolute minimum and should be inserted in Section A under the recited clause headings of the JBCC Minor Works Agreement in this project specific preliminaries

Selected examples of typical clauses are provided to indicate ways of describing such clauses. Users must delete, adapt or add to these examples to suit their particular circumstances

20. Warranties for materials and workmanship

Where warranties for materials and/or workmanship are called for, the **contractor** shall obtain a written warranty, addressed to the **employer**, from the entity supplying the materials and/or executing the work and shall deliver same to the **principal agent** on the **final completion** of the contract

The warranty shall state that workmanship, materials and installation are warranted for a specific period from the date of **practical completion** and that any **defects** that may arise during the specified period shall be made good at the expense of the entity supplying the materials and/or doing the work, upon written **notice** to do so

The warranty will not be enforced if the work is damaged by **defects** in the execution of the **works**, in which case the responsibility for replacement shall rest entirely with the **contractor**

21. Overtime

Should overtime be required to be worked for any reason whatsoever, the cost of such overtime is to be borne by the **contractor** unless the **principal agent** has specifically authorised, prior to execution thereof, that costs for such overtime are to be borne by the **employer**

22. Cooperation of the **contractor** for cost management

It is specifically agreed that the **contractor** accepts the obligation of assisting the **principal agent** in implementing proper cost management. The **contractor** will be advised by the **principal agent** of all cost management procedures which will be implemented to ensure that the **contract value** does not exceed the budget

23. Overloading

The **contractor** shall take all necessary steps to ensure that no damage occurs due to overloading of any portion of the **works** or temporary works eg scaffolding, etc. The **contractor** shall submit details of his proposed loading, storage, plant erection, etc to the **principal agent** for approval prior to proceeding with such loading, storing or erecting and shall comply with and pay for the **principal agent's** requirements in connection with the provision of temporary support work, etc. Any damage caused to the **works** by overloading shall be made good by the **contractor** at his sole expense

24. Propping of floors below

The **contractor** is advised that propping of floors below may be required if he wishes to use any areas of completed suspended reinforced concrete slabs for vehicle access, storage of **materials and goods** and location of plant, scaffolding, etc. The location of these areas and any necessary propping shall be approved by the **principal agent** and the cost thereof shall be borne by the **contractor**

25. Testing of flat roof waterproofing for watertightness

Flat roof waterproof areas shall be flooded and kept "ponded" for at least forty (40) hours as a test to ensure the watertightness of the waterproofing and before any further construction work is carried out above the waterproofing

26. Health and safety

User note

Insert the following where a health and safety specification is not yet available. Note that there is an obligation on the employer to ensure that the contractor has priced for the compliance with the act and the regulations and the reasonable provisions of the health and safety specification

Without limiting the generality of the provisions of clause 2.0, the **contractor's** attention is drawn to the provisions of the Construction Regulations issued in terms of the Occupational Health and Safety Act, 1993 as amended. It is specifically stated that the **employer** shall prepare a documented health and safety specification for the **works** and that the **employer** shall ensure that the **contractor** has made provision for the cost of health and safety measures during the execution of the **works**. The **contractor** shall price for compliance with the act and the regulations and the reasonable provisions of the aforementioned health and safety specification [2.1]

User note

Insert the following where a health and safety specification is available. Note that there is an obligation on the employer to ensure that the contractor has priced for the compliance with the act and the regulations and the reasonable provisions of the health and safety specification

Health and safety

Without limiting the generality of the provisions of clause 2.0, the **contractor's** attention is drawn to the provisions of the Construction Regulations issued in terms of the Occupational Health and Safety Act, 1993 as amended. It is specifically stated that the **employer** shall prepare a documented health and safety specification for the **works** (refer to Annexure ? for a copy of the relevant specification) and that the **employer** shall ensure that the **contractor** has made provision for the cost of health and safety measures during the execution of the **works**. The **contractor** shall price for compliance with the act and the regulations and the provisions of the aforementioned health and safety specification [2.1]

The **contractor** shall:

1. Comply with the health and safety specification for the **works**
2. Prepare and agree with the health and safety consultant the health and safety plan for the **works**
3. Cooperate with the health and safety consultant in all respects
4. Manage the compliance of all subcontractors with the regulations and with the health and safety plan and specification
5. Conform to the conditions contained in the **employer's** health and safety specification

27. Green star building certification

User note

Insert the provisions called for by the relevant green star consultant should it be a requirement that the project be submitted for green star certification

28. Broad based black economic empowerment (BBBEE)

Tenders submitted will be evaluated taking into account their empowerment rating

The **employer** will be monitoring the broad based black economic empowerment (BBBEE) status of the **contractor** throughout the execution of the **works**

The **contractor** is to submit to the **principal agent** on an annual basis a schedule of spend, split into vendors engaged as subcontractors and suppliers indicating their BBBEE rating including proof of the said rating

29. Advertising rights

The **employer** may elect to contract with advertising agencies for the erection of advertising hoardings, banners, wraps or the like for the duration of the contract. The **contractor** shall not prevent such an arrangement and will assist in the facilitation of same. The position and type of advertising structure to be agreed with the **principal agent** so as not to hinder the **contractor** in meeting the obligations under this **agreement**

30. Confidentiality

The **contractor** undertakes to maintain in confidence any and all information regarding this project and shall obtain appropriate similar undertakings from all subcontractors and suppliers. Such information shall not be used in any way except in connection with the execution of the **works**

No information regarding this project shall be published or disclosed without the prior written consent of the **employer**

31. Media releases

All rights of publication of articles in the media, together with any advertising relating thereto or in any way connected with this project, shall vest with the **employer**

The **contractor** together with his subcontractors shall not, without the prior written consent of the **employer**, cause any statement or advertisement connected with this project to be printed, screened or aired by the media

SECTION D : MONETARY ALLOWANCES

32. **Prime cost amounts**

User note

List each of the prime cost amounts under a suitable heading in bold

33. **Employer allowances**

User note

List each of the employer allowances and separately contingency allowances under a suitable heading in bold

34. **? Contingency**

User note

Insert one of the following clauses as may be required

Provide the sum of ?R..... (.....Rand)? for contingencies to be used at the discretion of the **principal agent** and deducted in whole or in part if not required ?

? Contingency

Allow ?..... (.....) per cent of the **contract sum** excluding contingencies for contingencies to be used at the discretion of the **principal agent** and deducted in whole or in part if not required ?