

PROVINCIAL ADMINISTRATION OF KWAZULU-NATAL
DEPARTMENT OF PUBLIC WORKS

CHAPTER 5 : CONSTRUCTION PHASE
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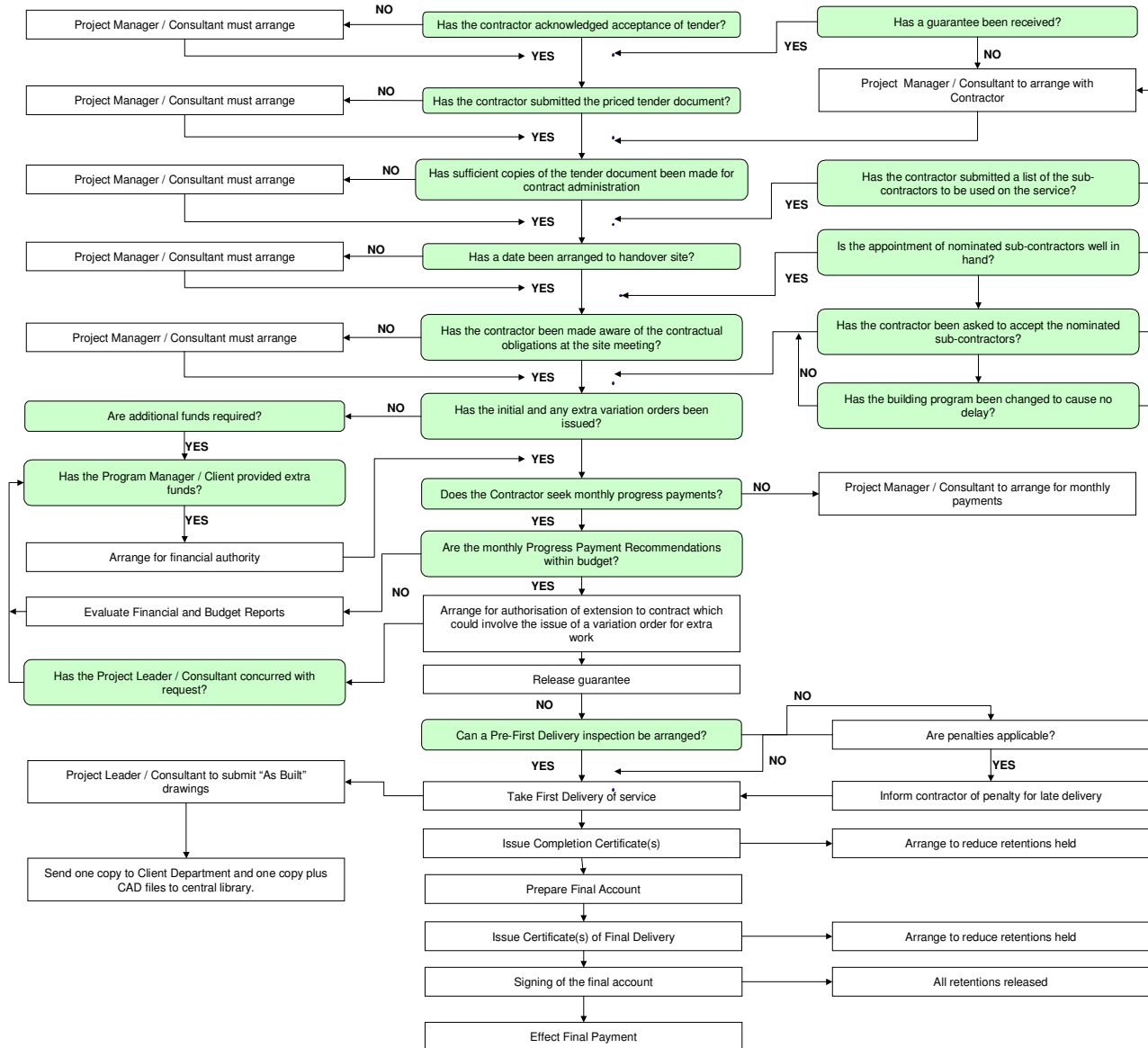
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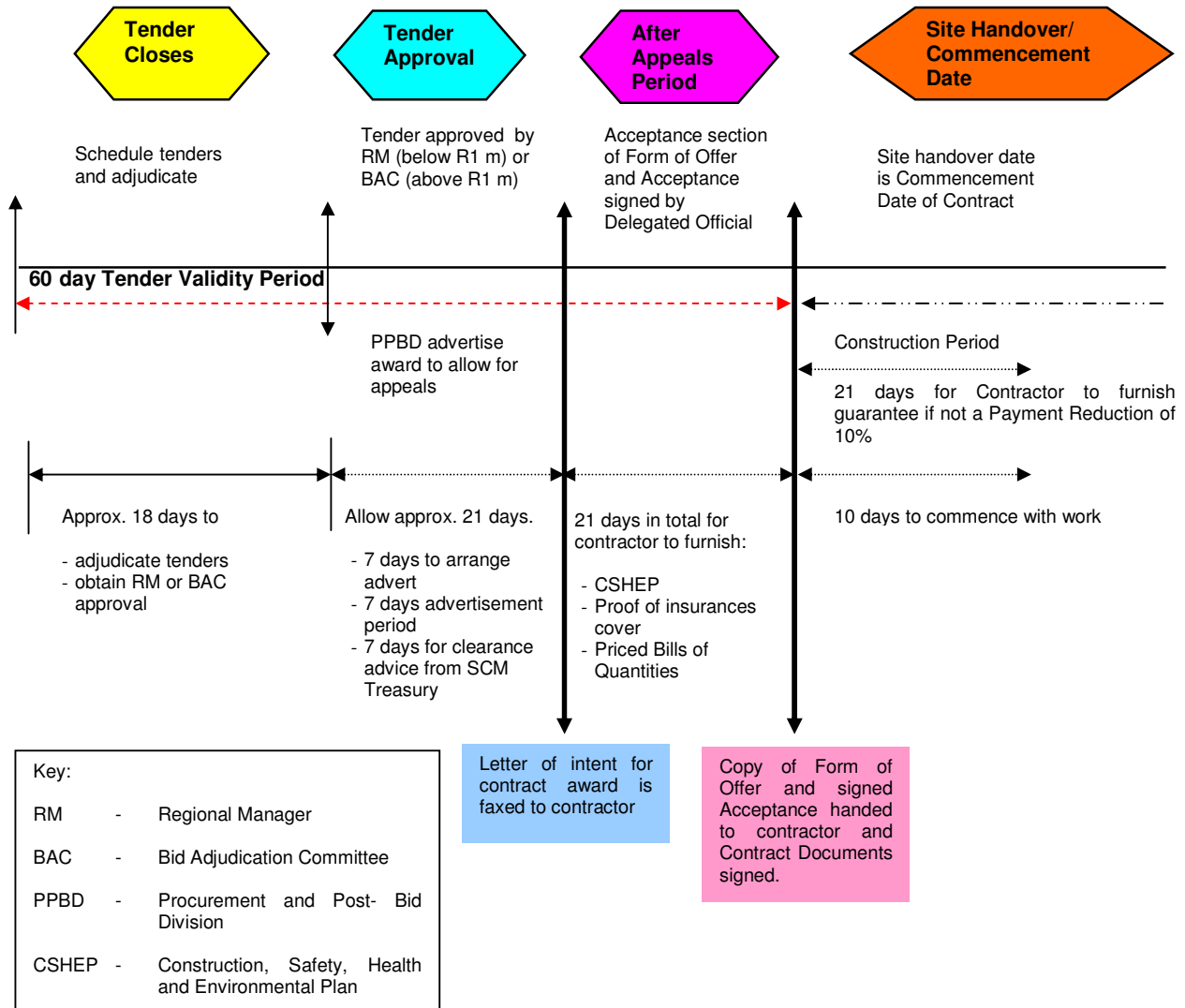
CHAPTER 5 : CONSTRUCTION PHASE

5.1A CONSTRUCTION PHASE FLOW CHART

The Flow Chart below provides the framework for the Construction Phase



5.1B CONTRACT SITE HANDOVER FLOW CHART



5.2 DETERMINATION OF COMMENCEMENT DATE

The Commencement Date is the day on which the Contractor receives one fully signed copy of the original of the Form Of Offer and Acceptance, including the Schedule of Deviations, if any. The Agreement comes into effect on the date when the Contractor receives one fully signed copy of the Form of Offer and Acceptance. Therefore for contractual reasons the Form of Offer and Acceptance must be given to the Contractor at Site Handover which will be the Commencement Date of the Contract.

As background to the above matter the following information is provided in order to give guidance to Consultants and Department of Public Works personnel in dealing with contractual matters.

- (i) The Agreement must be read in conjunction with the amplification of the qualification appearing in the Preliminaries and the Schedule of the Contract Data.
- (ii) The Contractor is given a letter (DOW309 – for JBCC Tenders or DOW310 –for GCC Tenders in which an intent for a contract award is given provided that within fourteen (14) calendar days of date of that communication *(NOTE : A further seven (7) calendar days extension may be granted resulting in a maximum of twenty one (21) calendar days to furnish all information. A letter should be issued to the Contractor granting the seven (7) day extension.)*, the following information is furnished:-
 - (a) proof of having insurances cover;
 - (b) a Construction Safety, Health and Environmental Plan
 - (c) the priced Bills of Quantities if not a Lump Sum Document; and
 - (d) Performance Guarantee, if applicable.
- (iii) A copy of the signed original Form of Offer and Acceptance is given to the Contractor at site handover.
- (iv) The Contractor is requested to furnish a guarantee within the twenty one (21) calendar days of the Commencement Date if not a 10% Payment Reduction was selected in lieu of a guarantee.
- (v) The commencement date of the contract will start on the site handover date.
- (vi) After the site has been handed over, the contractor must establish himself on the site and actually commence work within ten (10) calendar days. If this does not happen then the contractor is to be ordered in writing by the employer to commence both site establishment and work, failing which the contractor is in breach of contract.

5.3 HANDING OVER OF SITE – ALSO SEE 5.2 ABOVE

The date for the handing over of the site to the Contractor must be arranged by the Project Manager, in consultation with all persons concerned. The date and time eventually decided upon must be communicated, in writing, to all involved in the process and a record of this arrangement to be placed on the Project File.

The Project Manager is to arrange with the Principal Agent to notify the Contractor of the date on which the site is to be handed over. It is necessary to calculate the length of the contract correctly.

For example if the contract period is 6 months and the site is handed over on 15 January, the contract period will expire on 14 July (not 15 July).

Similarly if the contract period is 6 weeks and the site is handed over on Thursday, 15 January, the contract period will expire on Wednesday, 25 February.

The handover site date must be captured on WIMS, using screen WG03PU.

The site handover meeting must be chaired by the Private Architect / Project Manager or the Regional Manager, as the case may be and the site handed over by the Regional Manager (or his delegate) to the Contractor.

The following persons must be present:

- (i) Project Manager
- (ii) Consultant Architect
- (iii) Regional Manager (or representative)
- (iv) Contractor's representative
- (v) and any other the staff they may wish to include.

If circumstances warrant it, the following should also attend:

- (i) Head of the Regional Institution
- (ii) Consultant Quantity Surveyor
- (iii) Consultant Civil / Structural Engineer
- (iv) Consultant Electrical and Mechanical Engineers
- (v) The Client Department should also be invited to send a representative.

Ensure that Form DOW070 – Site Handover Certificate is completed and distributed to all concerned at the earliest possible day after the site handover. Copies to be placed on Project file and posted to the Contractor.

The following items must be thoroughly discussed at the handing over of the site:

- (i) Submission of applicable guarantee, if above R1 million Rand
- (ii) Site meetings
- (iii) Site instructions
- (iv) Site records
- (v) Variation orders
- (vi) Sub-contractors
- (vii) Contract programme
- (viii) Weekend and holiday work
- (ix) Claims for delays
- (x) Site establishment
- (xi) Security of the site
- (xii) Identification of site representative and key personnel

- (xiii) EPWP (Expanded Public Works Programme)
- (xiv) Safety (OHS Act)
- (xv) Planned site visits by Project Manager

5.4 SITE MEETINGS AND STANDARD AGENDA ITEMS

Where the complexity of the project warrants the holding of regular site meetings, these meetings are to be held at least once monthly.

It is the duty of the Principal Agent to see that the business proceedings and any decisions taken at site meetings are adequately recorded and that minutes of the meetings are produced within five (5) working days after meeting.

The Project Manager/Principal Agent as convenor of the meetings, must be informed by the Contractor as to who of his staff and / or sub-contractors he wishes to attend the meetings. The Project Manager/Principal Agent will indicate approval or otherwise of these nominations.

Minutes of site meetings must be kept and they must contain the following information in addition to the business content of the meetings.

- (i) Relevant Project File number.
- (ii) Name of the project, which must relate to the title on the Bills of Quantities or Lump Sum tender/contract document.
- (iii) Number, time of day and date of the meeting.
- (iv) List of persons attending the meeting, their designation and the organisation which they represent (i.e. Contractor, Consultant, Sub-Contractors, Regional Manager, etc.).
- (v) Apologies from persons who would normally attend the meetings but are not present.
- (vi) Confirmation (signed) or otherwise of the minutes of the previous meeting and any necessary amendments or comments.
- (vii) Matters arising from previous meetings which require finalisation.
- (viii) New matters.
- (ix) Items which arise for the first time and require recording.
- (x) A brief Progress Report, including
 - (a) % Time lapsed
 - (b) % Money spent
 - (c) % Overall completion
- (xi) EPWP Requirements:
 - (a) Person days of work
 - (b) Number of job opportunities
 - (c) Minimum daily wages
 - (d) Number of youth employed (18 – 25)

- (e) Number of women employed
 - (f) Number of people with disabilities
 - (g) HDI status
- (xii) Variation Orders.
- (xiii) Delays: These should be reflected separately in the minutes, i.e.
 - (a) Inclement Weather.
 - (b) Material supply problems
- (xiv) Safety issues
- (xv) The date and time for the holding of the next meeting.
- (xvi) The contract duration.
- (xvii) Approved extensions to practical completion.
- (xviii) List of the distribution of the minutes (containing where applicable, the addresses of the recipients - this is to forestall a claim for non receipt of minutes due to incorrect address) - duty of the Project Architect.
 - (a) 2 Copies to the Office of the Regional Manager. (Chief Professional and Acquisition Management Sub-directorate)
 - (b) Number of copies required by the Contractor with a maximum of 6
 - (c) One copy each to the Consultants commissioned by the Department, (e.g. Quantity Surveyor; Structural Engineer etc).
 - (d) Any person authorised to receive copies of the minutes may request extra copies but must make private arrangements with the Project Manager/Principal Agent with regard to payment for the extra copies.

It is the duty of the Project Manager/Principal Agent to see that the business proceedings and any decisions taken at site meetings are adequately recorded and that minutes of the meetings are produced as soon as possible after the meeting. Refer to Specimen 8, contained at the end of this document, for an example of the format to follow in producing these minutes.

5.4.1 Site Instructions

These must be recorded and officially confirmed by the Consultant Architect as soon as possible. An Instruction Book in quadruplicate must be available at all times, and its use limited to defined people such as the Consultant Architect, other Consultants, Inspectorate Staff and Works Supervisor.

5.4.2 Site Records

The Contractor is to maintain his own records on site for labour and plant, which must be available to the Project Manager. Site Instruction Books are available from the Regional Office, Acquisition Management Sub-directorate

5.4.3 Variation Orders

Under no circumstances may any instructions regarding variations to a service be accepted from the Head of the Client Department, his staff or management committee. The Client Department must be asked to submit, in writing, its request to vary a contract to the Head: Public Works for consideration because such requests may have negative contractual or legal consequences.

5.4.4 Phased Completion

Any special requirements by the Client Department are to be explained in the tender documents together with special conditions relating to retention and reduction of penalties where applicable. Details must be incorporated in the contract programme.

5.4.5 Sub-Contractors

A list of sub-contractors engaged by the Contractor must be submitted to the Regional Office concerned through the Consultant Architect for noting.

5.4.6 Nominated Sub-Contractors

When a specialist service is to be undertaken as a nominated sub-contract, and the Department of Public Works approval has been received, a provisional sum to cover the cost of the specialist service may be included in the tender document for the Main Contract.

Milestones, similar to that of the main contract, must be drawn up by the Project Manager, clearly indicating the stages planned for the documentation of the nominated sub-contract. The documentation of the nominated sub-contract must be dovetailed so as to coincide with the programme planned for the Main Contract. Generally, the nominated sub-contract document must be completed at the same time as that of the tender document for the Main Contract.

If the estimate (provisional sum) for the specialist service does not exceed R200 000, quotations may be invited by the Regional Manager. The quotations will be based on documentation prepared by the responsible Consultant.

On approval, the Procurement and Post-Bid Division of the Acquisition Management Sub-directorate must process the nomination to the Main Contractor and the sub-contract. Tender document must contain copies of the Agreement and Preliminaries relating to the Main Contract.

If the estimate (provisional sum) exceeds R200 000, the responsible person must prepare a tender document for the specialist service and submit these to the Regional Manager concerned. Public tenders will be invited. Before seeking the authority to accept a tender, it is necessary to obtain the approval from the Main Contractor with regard to his acceptance of the proposed Sub-contractor. Once authority has been received, the Procurement and Post-Bid Division of the Acquisition Management Sub-directorate must request the Main Contractor to contact the proposed Sub-Contractor and confirm the acceptance.

Once these procedures have been completed, the provisions of the Agreement will apply.

5.4.7 Contract Programme

The Contractor must prepare a programme chart for the work and keep it up-to-date. The phasing of the contract (where specified in the tender document) must be indicated.

5.4.8 Weekend And Holiday Work

This may be undertaken on written request to the Principal Agent for approval and if acceptable to the Client Department.

- (i) All work undertaken must remain exposed for inspection.
- (ii) No work shall be done unless proper arrangements for inspecting have been made with the Project Manager or responsible Consultant.

5.4.9 Claims For Delay

These must be recorded at the time of occurrence, substantiated and claimed within twenty (20) working days of the event causing the delay for JBCC projects or twenty eight (28) working days of the causing the delay for GCC projects. The contract period includes all statutory holidays and holidays recognised in the building industry. The Works Supervisor (if one has been appointed) will maintain his own records on weather conditions and also note any delays in the delivery of materials.

5.4.10 Site Establishment

Working space is to be defined, and protected areas identified by both the Regional Manager and Head of Institution concerned. These matters must be finalised prior to completing the tender document. The type and location of fencing to the work area is to be decided and specified. If the contract is to be carried out in phases, cognisance must be taken of this factor when placing site huts and fencing work areas.

(i) **Access to Site and Public Roads, Kerbs Etc.**

Hoardings, fencing requirements, access from public roads (which matters should have been finalised prior to completing the tender document) are to be agreed between the Contractor and Local Authority.

(ii) **Pegs and Boundaries**

These are to be handed over by the Regional Manager. In order to void disturbing boundary pegs, two corner posts and two stays must straddle the pegs. The Regional Manager is to locate and mark pegs before the handover date.

(iii) **Levels, Datum and Benchmark**

This is to be handed over by the Consultant Architect / Regional Manager and be related to levels shown on drawings. The Contractor is to concrete in the datum pegs.

(iv) **Setting Out**

This is to be accepted by the Consultant Architect / Regional Manager.

(v) **Name Board**

The Regional Manager must issue a drawing showing the wording to be used. The siting is to be agreed. The Contractor's and Sub-contractors' boards are to be displayed in an orderly manner after approval by the Head: Public Works.

(vi) **Offices**

These must be located in a reasonably quiet zone, away from the Works (see also above comment dealing with Site Establishment).

(vii) **Plant**

No noisy plant is to be located near existing buildings which are occupied.

(viii) **Municipal Services and Connections (used during construction)**

The Contractor is to organise the following as soon as possible:-

- (a) A separate electrical connection. Alternatively the Contractor is to supply and install his own meter connected to the institution's supply and pay the institution for all current consumed on a monthly basis. Monthly readings are to be noted in the Site Minutes.

- (b) The Contractor may ask the Head: Public Works to support his application for a telephone if he has difficulties. The Contractor must pay for the installation and all costs.

(c) **Water for the Works.**

For earthworks contracts the meter and connection is to be arranged and paid for by the Contractor in the name of the KwaZulu-Natal Provincial Administration.

For building contracts the Contractor is to arrange for his own connection and meter or forfeit ½% of contract sum if the Administration's supply is used, or alternatively the Contractor is to supply and install his own meter connected to the institution's supply and pay the institution for all water consumed on a monthly basis. Monthly readings are to be noted in the Site Minutes.

The Contractor's decision is to be noted on a Variation Order and in the site meeting minutes.

(d) **Toilets**

The type of temporary toilets must be established and the toilets provided immediately. The Local Authority's approval of

the facilities must be obtained. Where it is practical, a temporary connection to a municipal sewer must be made. Contractors may under no circumstance use facilities of an occupied site.

(ix) **Protection of Trees Etc.**

The Regional Manager is to indicate trees and other features which must be protected. No trees are to be removed without prior authority, nor are any trees which are to remain to be damaged in any way.

(x) **Identification of Personnel**

Personnel of the contractor must wear identification clothing at all times.

5.5 SUPERVISION BY WORKS SUPERVISOR, IF APPOINTED

In exceptional cases where full time supervision is required and, provided that additional funds are made available by the Accounting Officer, the Head: Public Works can approve such an appointment to assist the Project Manager with this task on site. The method of engaging the services of a Works Supervisor is to be agreed with the Head: Public Works.

The Works Supervisor's main functions are:

- (i) Reporting to the Project Manager or his delegatee, depending on the composition of the Consultant Team on site.
- (ii) Quality Control
- (iii) Foundation re-measurement
- (iv) Monthly / weekly reports
- (v) Compilation of daily diary
- (vi) Control of Site Instruction Book
- (vii) Assistance with the setting out of buildings, and in general to see that what is specified and on the drawings, is in fact built. Where possible, instructions to the Contractor should be issued through the Works Supervisor.

5.5.1 Contractor To Provide A Site Representative

In terms of Clause 6 of the JBCC Agreement or Clause 22 of the GCC Agreement, the Contractor shall constantly keep upon the Works, a competent Foreman/Contractor's Site Agent/ Representative.

5.5.2 Supervision By Departmental Personnel

Supervising Officers of the Department of Public Works may carry out inspections at any time. Any comments or amendments which they may consider necessary as a result of these inspections must be conveyed to the Project Manager/Principal Agent, through whom all instructions to the Contractor will normally be given.

In the event of any difference of opinion between a Consultant and the District / Regional Inspectorate concerning any particular finish, method of construction or detail, the matter must be referred by the Regional Manager to the Head: Public Works for a decision.

5.5.3 Progress Reports

The resident Works Supervisor and or the Project Manager must prepare the weekly / monthly reports. The WIMS must be updated with this information, using screen WG05PU.

5.6 EXTENSION OF PRACTICAL COMPLETION DATE

Approval of request received from contractors for the extension of the Practical Completion Dates of contracts are processed in terms of the relevant clause and stated time of the particular Agreement and SCM Delegation 7.3.2.

The Contractor must submit within the specified time of the relevant Clause of the Agreement any requests for extensions to the Practical Completion Dates to the Project Manager/ Principal Agent.

The Project Manager must submit any request made by the Contractor for extension of the Practical Completion Dates to the Consultant Architect (or Consultant Engineer in the case of engineering contracts) for comment.

The Project Manager/Principal Agent, must arrange for either Form DOW024 or Form DOW024A titled "Application For Extension To Practical Completion Date", to be completed.

The Project Manager/Principal Agent must indicate whether he/she supports the application or not before submission for acceptance and final approval or not by either the delegated Deputy Official or the BAC.

The Form DOW025, titled "Past Authorised Extensions To The Practical Completion Date", must be completed along with Form DOW024 or Form DOW024A and, if approval is eventually granted or deferred, the Contractor must be advised using Form DOW026 for tenders or DOW026Q for quotations, endorsing copies to all concerned with the project. Alternatively, should the request be refused, Form DOW027 for tenders or DOW027Q for quotations must be issued, with copies to all concerned with the project.

All extensions to the Practical Completion Date must be captured by the Procurement and Post-Bid Division of the Acquisition Management Sub-Directorate on the Works Information Management System, using screen WG03PU.

All extensions to the Practical Completion Date must also be recorded in the minutes of Site Meetings.

The extensions to Practical Completion Dates are to be calculated in working (not calendar) days.

NB It can occur that an extension to the Practical Completion Date is as a result of a variation to the contract. This being the case approval must be first sought to pass the variation order against the Contract which may involve having to obtain additional

funds as well. Form DOW037 titled “Financial Request For Variation Order And, If Necessary, Additional Funds” must be used.
No extension to the Construction Period may be granted after the expiry of the Contract.

5.7 PENALTIES

5.7.1 Introduction

Both the Treasury and the former Provincial Tender Board approved that in the case of Building and Allied Industry contracts, the Department of Public Works has the authority to specify, in tender / contract documents which include the Department’s adopted Agreement, the penalty for failure to render the service within the stipulated or extended contract period in a specific monetary amount per day, **based on 0.04% of the estimated cost of the project at the time of preparing the tender document**. The Scale of Penalties to apply is set out below. The penalty amount can be calculated if need be on the following basis:

The penalty for failing to complete the whole of the Works is:

0.04% of the contract sum round up to the nearest R10

If the Works is to be completed in portions, the following is also applicable:

The penalty for failing to complete particular portions of the Works shall be 0.04% of the value of that Section round up to the nearest R10.

In the case of contracts resulting from the acceptance of quotations, the penalty is calculated as set out in the quotation documents.

5.7.2 Penalties For Late Completion

The Scale of Penalties below has been calculated applying 0.04%.

ESTIMATED COST R			PENALTY PER DAY R	ESTIMATED COST R			PENALTY PER DAY R
0	-	10 000	4	1 000 001	-	1 050 000	420
10 001	-	20 000	8	1 050 001	-	1 100 000	440
20 001	-	30 000	12	1 100 001	-	1 150 000	460
30 001	-	40 000	16	1 150 001	-	1 200 000	480
40 001	-	50 000	20	1 200 001	-	1 250 000	500
50 001	-	60 000	24	1 250 001	-	1 300 000	520
60 001	-	70 000	28	1 300 001	-	1 350 000	540
70 001	-	80 000	32	1 350 001	-	1 400 000	560
80 001	-	90 000	36	1 400 001	-	1 450 000	580
90 001	-	100 000	40	1 450 001	-	1 500 000	600
100 001	-	110 000	44	1 500 001	-	1 550 000	620
110 001	-	120 000	48	1 550 001	-	1 600 000	640
120 001	-	130 000	52	1 600 001	-	1 650 000	660
130 001	-	140 000	56	1 650 001	-	1 700 000	680
140 001	-	150 000	60	1 700 001	-	1 750 000	700
150 001	-	160 000	64	1 750 001	-	1 800 000	720
160 001	-	170 000	68	1 800 001	-	1 850 000	740
170 001	-	180 000	72	1 850 001	-	1 900 000	760
180 001	-	190 000	76	1 900 001	-	1 950 000	780
190 001	-	200 000	80	1 950 001	-	2 000 000	800
200 001	-	210 000	84	2 000 001	-	2 050 000	820
210 001	-	220 000	88	2 050 001	-	2 100 000	840
220 001	-	230 000	92	2 100 001	-	2 150 000	860
230 001	-	240 000	96	2 150 001	-	2 200 000	880
240 001	-	250 000	100	2 200 001	-	2 250 000	900
250 001	-	275 000	110	2 250 001	-	2 300 000	920
275 001	-	300 000	120	2 300 001	-	2 350 000	940
300 001	-	325 000	130	2 350 001	-	2 400 000	960
325 001	-	350 000	140	2 400 001	-	2 450 000	980
350 001	-	375 000	150	2 450 001	-	2 500 000	1000

375 001	-	400 000	160	2 500 001	-	2 550 000	1020
400 001	-	425 000	170	2 550 001	-	2 600 000	1040
425 001	-	450 000	180	2 600 001	-	2 650 000	1060
450 001	-	475 000	190	2 650 001	-	2 700 000	1080
475 001	-	500 000	200	2 700 001	-	2 750 000	1100
500 001	-	525 000	210	2 750 001	-	2 800 000	1120
525 001	-	550 000	220	2 800 001	-	2 850 000	1140
550 001	-	575 000	230	2 850 001	-	2 900 000	1160
575 000	-	600 000	240	2 900 001	-	2 950 000	1180
600 001	-	625 000	250	2 950 001	-	3 000 000	1200
625 001	-	650 000	260	3 000 001	-	3 100 000	1240
650 001	-	675 000	270	3 100 001	-	3 200 000	1280
675 001	-	700 000	280	3 200 001	-	3 300 000	1320
700 001	-	725 000	290	3 300 001	-	3 400 000	1360
725 001	-	750 000	300	3 400 001	-	3 500 000	1400
750 001	-	775 000	310	3 500 001	-	3 600 000	1440
775 001	-	800 000	320	3 600 001	-	3 700 000	1480
800 001	-	825 000	330	3 700 001	-	3 800 000	1520
825 001	-	850 000	340	3 800 001	-	3 900 000	1560
850 001	-	875 000	350	3 900 001	-	4 000 000	1600
875 001	-	900 000	360	4 000 001	-	4 100 000	1640
900 001	-	925 000	370	4 100 001	-	4 200 000	1680
925 001	-	950 000	380	4 200 001	-	4 300 000	1720
950 001	-	975 000	390	4 300 001	-	4 400 000	1760
975 001	-	1 000 000	400	4 400 001	-	4 500 000	1800

5.7.3 Penalties – Imposition and Applications for Waiving of Penalties

Penalties must be strictly imposed when a contract has not been completed by the completion date or any approved extension thereof. The necessary deductions must be made in all payments processed after the due date or extended due date for completion of the Contract.

Should a contractor appeal in writing against the imposition of penalties and motivate for the waiving of same, the appeal must be considered and receive a written response.

The Treasury Regulations issued in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999) and amendments thereto makes provision in Clause 11.4 to write-off debts owed to the State or to waive debts if the Accounting Officer (Head of Department) is satisfied that it would be to the advantage of the State to effect a settlement. All debts written off must be disclosed in the Annual Financial Statements of the Department of Public Works.

It then follows that if it is considered that a contractor's appeal to waive penalties has merit and support and can be fully and properly motivated by the Regional Office concerned, then a submission addressed to the Head : Public Works must be prepared and routed through the Chief Directorate: Operations and the Office of the Chief Financial Officer for consideration of approval in terms of Treasury Regulation 11.4.

If necessary see paragraph titled 'Reporting of Debt'.

5.8 DEFAULT IN ACCORDANCE WITH THE CONDITIONS OF CONTRACT

Whenever it becomes apparent to a Project Manager that a Contractor is performing unsatisfactorily, he/she must bring the matter to the attention of the Regional Manager. Should the Regional Manager concur and is also not satisfied with the work performance/standard of work, a warning letter must be submitted (by facsimile and registered mail) to the offending Contractor expressing concern for delay and request that a revised work programme be forwarded to the Department indicating how lost time will be made up to meet the contract completion date. The conditions of the Agreement dealing with default and penalties must also be stated. Copies of the letter must be endorsed to all concerned with the Contract and the Contractor must be given seven (7) working days to respond. The progress of the contract must be strictly monitored and if the Contractor fails to furnish a revised work programme and no visible accelerated work progress is being made

on the contract, a report must be submitted to the Head Office without delay, together with a suitable draft letter for consideration of signature by the Head : Public Works. The draft letter must contain the reasons for addressing the letter to the Contractor.

The Head: Public Works must give due written warning notice to the Contractor to improve his workmanship on site, as provided in the Agreement dealing with default, failing which the Contractor will be directed to suspend and discontinue the execution of Works, and to withdraw himself and his workmen from site. Thereafter steps will be taken to cancel the contract and the matter will be reported to CIDB and the Supply Chain Management component of the KZN Treasury who may decide to either suspend the contractor for a period of time or cancel the registration of the contractor on their databases or blacklist the contractor.

Greater elaboration dealing with default has been covered in this document under the paragraphs titled, "Unsatisfactory Work Performance By A Contractor" and "Contract Completion Report, Contractor's Analysis Report And Imposition Of Penalty". These paragraphs must be consulted for more information.

If necessary see paragraph titled 'Reporting of Debt'.

5.9 SITE INSTRUCTION BOOK AND VISITORS DIARY

5.9.1 Site Instructions

A consecutively numbered coloured-quadruple carbonised paged Site Instruction Book for all projects over R50 000 must be issued by the Regional Manager at the handing over of the site. Arrangements must be made where the Site Instruction Book will be kept on site should the contract not require a Site Office to be provided by the Contractor.

The Site Instruction Book must not be removed from the site until "completion" of the contract has been taken. In the event of the Site Instruction Book being mislaid, it must be replaced with the cost thereof being for the account of the Contractor.

Site instructions, commencing from the front of the book, must be recorded and officially confirmed by the Consultant Architect or Project Manager as soon as possible. A Site Instruction Book must be available on the site at all times, and its use limited to specific persons such as the Consultant Architect, Consultants, Inspectorate Personnel and Works Supervisors.

Distribution of the copies is to be as indicated on the front cover of the book.

One copy:-

- (i) to remain in the book, on site;
- (ii) to the Project Manager who, from this one, will make copies for other team members.
- (iii) to the Consultant Quantity Surveyor / Engineer.
- (iv) to the Contractor.

The set of 4 pages of a site instruction must contain

- (i) Contact numbers and addresses of the Contractor, Project Manager and Regional Manager.
- (ii) The contract description and contract number, including the WIMS number (this information must be reflected on the front cover page of the Site Instruction Book as well).

Instructions as to the use of the Site Instruction Book must be prepared and pasted on the back of the front cover with a note requesting visitors to sign at the back of the book.

All site, and other instructions, relating to the contract, whether verbal or telephonic, must be recorded in the Site Instruction Book and signed / countersigned by the Consultant Architect (or Project Manager) and the Contractor.

Where Bills of Quantities form part of the contract documents, no financial arrangements concerning variation orders, or their assessment, must be entered into with the Contractor without consulting the Quantity Surveyor / Engineer.

No changes or alterations to the service, discussed during the course of site meetings, are to be implemented until a formal instruction has been recorded in the Site Instruction Book and where a site instruction necessitates it, a Variation Order is to be issued.

On the day that "Completion" of any project is taken and the Completion Certificate is issued, the last site instruction is to be numbered, signed by the Consultant Architect (or officer taking delivery of the project), and issued to and signed for by the Contractor and is to be worded as follows:

"This site instruction, number indicates that "Practical Completion" of this project has been taken and this is the last site instruction that will be issued on this project."

Other than by means of a formal Variation Order and re-measurement of provisionally measured work no additional expenditure of funds can be incurred and the Quantity Surveyor / Engineer may proceed with the preparation of the Final Account.

5.9.2 Visitors Diary

The Site Instruction Book will be used as the official record of visits to the site. The recording of visits to site will commence from the end of the Site Instruction Book and be carried towards the front of the book until a stage is reached where this information meets with the issued Site Instructions. When this occurs the Book must be safely kept for inclusion with the contract document file and a new Site Instruction Book be taken into use.

Visitors to the site, e.g., Consulting Team, Project Manager, Inspectors, Client Department representatives members and other involved persons must, except when attending official site meetings, must be requested to complete the back section of the Site Instruction Book, known as the Visitors Diary, and provide:

- (i) Names;
- (ii) Contact numbers and addresses,
- (iii) Dates and times of visits, and
- (iv) Comments

A visitor may keep one page as a record of the comments made and, if so desired, forward a copy thereof to the Project Manager for noting. The remaining three (3) copies are distributed as follows:

- (i) one to the Project Manager
- (ii) one to the Contractor
- (iii) one to remain in the Book

5.10 INTERIM PAYMENT TO CONTRACTORS

5.10.1 Interim Monthly Payment Certificate

In terms of the Agreement, read together with the Preliminaries and Contract Data an Interim Monthly Payment Certificate shall be issued until the Final Payment Certificate. The contractor shall co-operate and deliver to the Principal Agent a monthly statement (invoice) and all relevant documents and an assessment of quantified amounts of work completed for the preparation of an Interim Payment Certificate.

Generally, an Interim Payment Certificate would comprise:

- (i) Value of work executed. The value of work must be reasonable estimate of the work
- (ii) Materials on and off site. The contractor needs to provide invoices or receipts in respect of the purchase and delivery of materials.
- (iii) Security adjustment. Where the contractor has elected to provided the security to which payment provisions apply or has defaulted in not furnishing his chosen security
- (iv) Adjustment to contract value. Anticipated adjustments are not included.
- (v) Contract price adjustments

5.10.2 Advance on Account of Materials on Site

In determining the value of the unfixed materials, cognisance must, in the case of Bills of Quantities, be taken of the tendered rates or prices for such materials as finally fixed or installed.

When a Contractor requests an advance in respect of materials “on” site to be included in a Progress Payment, the officer processing the payment must:-

- (i) check on each application that the material is on site (has not subsequently been built in) and, the quantity claimed is correct.
- (ii) not include material which is considered to have been brought onto site prematurely.
- (iii) ensure that the application is made on the certificate forms required by this Department, which are
 - (a) Main Contractor’s Cession And Claim For Payment In Respect Of Unfixed Materials. (Form DOW028),
 - (b) Sub-Contractor’s Cession And Claim For Payment In Respect Of Unfixed Materials (Form DOW029) and,

- (c) Details Of Claim For Payment In Respect Of Unfixed Materials (Form DOW030) and these forms are contained at the end of this document.
- (iv) all applications for advances in respect of unfixed materials must be signed by the officer processing the payment.

5.10.3 Advance on Account of Materials which cannot be delivered on site

Note that in each and every case of a request for an advance in respect of materials which cannot be delivered on site, the specific approval, in writing, from the Quantity Surveying Services (or Electrical and Mechanical Engineering Services in the case of electrical and / or mechanical materials) must be obtained before including any such advance in a progress payment and in any subsequent progress payment where such materials have not in the intervening period been delivered to the site.

When a Contractor requests that an advance in respect of materials not on site be included in a progress payment, this can only be considered when:

- (i) the equipment, fitting, component, etc., has specifically been manufactured for the particular contract.
- or
- (ii) in respect of materials, that they are not normal materials and have been specifically designed and ordered for the contract, and would unlikely be able to be used on another contract.
- and
- (iii) approval from the Quantity Surveying or Electrical and Mechanical Engineering Components, has been obtained.

Should the above conditions have been complied with then, in addition:

- (i) The following other requirements must also have been complied with, i.e.,
 - (a) that they are adequately stored and protected against weather or any other kind of damage, loss or destruction,
 - (b) that the Head: Public Works be provided with an acknowledgement by the Contractor that the stated materials and goods are the property of the Administration, even though they have not been placed on site;
 - (c) that the Head: Public Works be provided with a certificate that the said materials, goods, etc., are covered by insurance against fire and any other cause of loss, damage or destruction.
- (ii) That the goods, materials, etc., have been stored in a separate area and can be easily identified as being the Administration's property. If the area where the material is stored is not the property of the Contractor, a similar certificate must be provided by the owner of the property.

- (iii) That they have been inspected by a nominee of the Administration and found to be in good order and an insurance policy for said value materials are provided.
- (iv) That proof be supplied by the Contractor that the goods or materials claimed are his *bona fide* property and have been paid for or a Contract Guarantee is furnished for the value of the said materials.
- (v) That all applications for payment be signed by the officer processing the payment.
- (vi) That the applications are submitted with the respective payment certificate forms listed hereafter.

5.10.4 Advances only in respect of Contractor's *bona fide* property

Every effort must be made and every precaution taken to ensure that the Administration is not at risk in regard to advances in respect of unfixed materials be they on site or such that they cannot be delivered on site. In examining invoices, etc., ensure that there are no suspensive conditions printed thereon (either on the face or the reverse).

5.10.5 Recommendations For Interim Payments

All services undertaken by the Department of Public Works are placed on the Works Information Management System (WIMS). This is a computerised system which records the progress of services from the planning stage to their eventual completion. The system is used to effect all payments as well. A special form numbered WIMS5-01, titled, "Interim Payment for the GCC Agreement," has been designed strictly for the purpose of capturing and placing data on the system which will result in the generation of payments that will be deposited into bank accounts of contractors, using the electronic media. Depending on the nature and extent of a contract, the following forms, completed, should accompany recommendations for a GCC payment, Form WIMS5-01, titled, "Contract-Progress Payment":

- (i) Amounts allowed in each Progress Payment – Form DOW031
- (ii) Schedule of Nominated Sub-Contractors – Form DOW032
- (iii) Main Contractor's Cession and Claim For Payment In Respect of Unfixed Materials – Form DOW028
- (iv) Sub-Contractor's Cession And Claim For Payment In Respect Of Unfixed Materials – Form DOW029
- (v) Details of Claims for Payment In Respect Of Unfixed Materials – Form DOW030
- (vi) Monthly Cash Flow - Contractor / Supplier / Lessor - Form DOW034

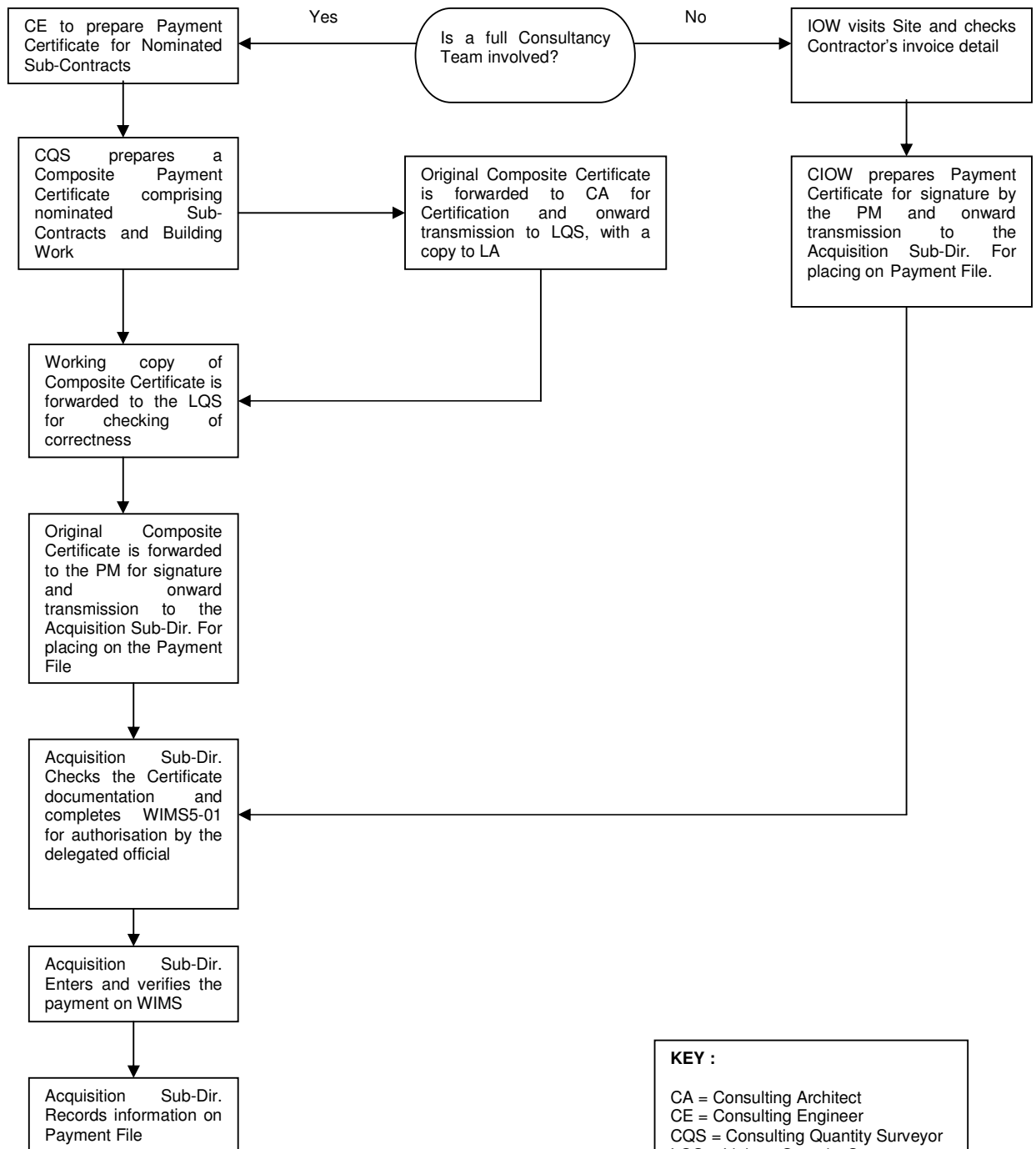
In the case of a JBCC Contract the following forms are to be used:

- (i) Contractor/Supplier - Payment Advice issued in terms of 31.0 of the JBCC N/S Subcontract Agreement (WIMS number to be allocated)
- (ii) N/S Contractor/Supplier – N/S Recovery Statement (in terms of 33.0 of the JBCC series 2000 N/S Subcontract Agreement) (WIMS number to be allocated)
- (iii) Contractor – Payment certificate Notification issued in terms of the JBCC Principal Building Agreement (WIMS number to be allocated)
- (iv) Contractor/Supplier – Recovery Statement (in terms of 33.0 the JBCC series 2000 PBA) (WIMS number to be allocated)

- (v) Contractor/Supplier – Payment Certificate issued in terms of 31.0 of the JBCC Principal Building Agreement (WIMS number to be allocated)

All of the above forms are contained in Letters and Forms.

5.11 WORKFLOW CHART FOR INTERIM PAYMENTS



5.12 PROCEDURE FOR CONTRACT PAYMENTS

Valuations must be made each month, regardless of whether the contractor has requested a payment or not.

In the case of Nominated Sub-Contracts, the responsible Consultant, in consultation with the Nominated Sub-contractor must, on a monthly basis, determine the value of work executed and complete the following forms:

- (i) A recommendation showing the value of work completed and reflecting the appropriate retention to be held.
- (ii) Sub-Contractor's Cession And Claim For Advance Payment In Respect Of Unfixed Materials - Form DOW029, where applicable, together with a schedule giving all details (see Form DOW 030).

In the case where the project is handled Departmentally, the Inspector Of Works completes Form DOW030 titled "Details Of Claim For Advance Payment In Respect Of Unfixed Materials".

The Consultants must submit the Nominated Sub-Contractors Progress Payment Recommendation to the Consultant Quantity Surveyor for inclusion in the Main Contractor's payment. The Consultant Quantity Surveyor, in determining the Main Contractor's payment will arrange to have the following other forms completed which may be applicable:

- (i) Main Contractor's Cession And Claims For Advance Payment In Respect Of Unfixed Materials - Form DOW028, where applicable.
- (ii) Details Of Claims For Advance Payment In Respect Of Unfixed Materials - Form DOW030.
- (iii) Amount Allowed In Each Progress Payment - Form DOW031.
- (iv) Schedule Of Nominated Sub-Contractors Amounts Included In Progress Payment No – Form DOW032
- (v) Monthly Cash Flow - Contractor / Supplier / Lessor - Form DOW034
- (vi) GCC Agreement Payment - Contract-Progress Payment - Form WIMS5-01
- (vii) JBCC Agreement Payment:
 - (a) Contractor/Supplier - Payment Advice issued in terms of 31.0 of the JBCC N/S Subcontract Agreement (WIMS number to be allocated)
 - (b) N/S Contractor/Supplier – N/S Recovery Statement (in terms of 33.0 of the JBCC series 2000 N/S Subcontract Agreement) (WIMS number to be allocated)
 - (c) Contractor – Payment certificate Notification issued in terms of the JBCC Principal Building Agreement (WIMS number to be allocated)
 - (d) Contractor/Supplier – Recovery Statement (in terms of 33.0 the JBCC series 2000 PBA) (WIMS number to be allocated)

- (e) Contractor/Supplier – Payment Certificate issued in terms of 31.0 of the JBCC Principal Building Agreement (WIMS number to be allocated)
- (viii) The original composite Progress Payment must be forwarded to the Consultant Architect for certification and thereafter, submission to the Departmental Quantity Surveyor/ Engineer. A copy of the Progress Payment must be forwarded direct to the Departmental Quantity Surveyor/ Engineer for checking of correctness as the one to be signed by the Consultant Architect could take some days to reach the Department.

The Departmental Quantity Surveyor/ Engineer must submit the original Interim Payment, with amendment if necessary, to the Project Manager for signature and onward transmission to the Acquisition Management Sub-directorate. The Project Manager must notify the Project Team of any amendments made to the Recommendation For Payment Certificate. Should it be apparent to the Project Manager that a contract could be significantly over or under-spent in a financial year, it is essential to obtain full written reasons therefore and, through the Regional Manager, report the matter to either the Client Department concerned or the BAS Responsibility Manager (if a Departmental Project) for appropriate action.

The Acquisition Management Sub-directorate must check the Certificate documentation and complete the block, titled, “Key Information”, of all WIMS Forms and pass the information to the Regional Manager or Deputy Manager for authorisation on the Payment File.

NOTE: When the initial Interim Payment Certificate is received, the Acquisition Management Sub-directorate must ensure that the Contractor has provided a guarantee.

Once the payment is approved, the responsible officials in the Acquisition Management Sub-directorate must enter the payment on WIMS (WM19PU) and the field “Payment Entered” on the WIMS Payment Form, must be signed. The details of the payment must be entered into the Payment Register (date, WIMS number, WIMS contract number, contractors, name and amount). The payment must be verified on WIMS (WM38PU). The authorising signature on the payment document must be checked against the list of specimen signatures of officials authorised to approve payments and be signed by the checking official in the field “Payment Verified”.

NB: All copies of documentation must be stamped “PAID” to prevent duplication.

The documentation must be filed on the Payment File.

When available, the details of the payment (cheque number date, batch and run number) must be entered into the Payment Register.

The Acquisition Management Sub-directorate must arrange to check the WIMS Batch Report and thereafter forward a copy of the documentation to the Accounting Services Sub-directorate, Head Office.

5.13 PROFESSIONAL FEE CLAIMS

In terms of the Conditions and Procedures under which Consultants are commissioned by the Department of Public Works, Consultants are as a general rule remunerated for professional services rendered at a fee calculated as a percentage of the cost of the Works, in accordance with a scale of fees applicable to each particular discipline and are contained in various Government Gazette Notices.

Under special circumstances, consultants may be remunerated on a time charge basis as provided for in their respective Conditions and Procedures under which Consultants are commissioned.

Payments made to Consultants are arranged via the Works Information Management System and when appointments are made, depending on their particular discipline, Consultants must complete one of the following WIMS forms, when submitting a claim:

- (i) Consultant – Payment (Architect) WIMS 6-01
- (ii) Consultant – Payment (Quantity Surveyor) WIMS 7-01
- (iii) Consultant – Payment (Civil / Structural Engineer) WIMS8-01
- (iv) Consultant – Payment (Electrical / Mechanical Engineer) WIMS9-01
- (v) Consultant – Payment (Project Management / Co-ordination
Community Liaison) WIMS10-01
- (vi) Consultant – Payment (Professional Land Surveyor) WIMS11-01

and in each case:

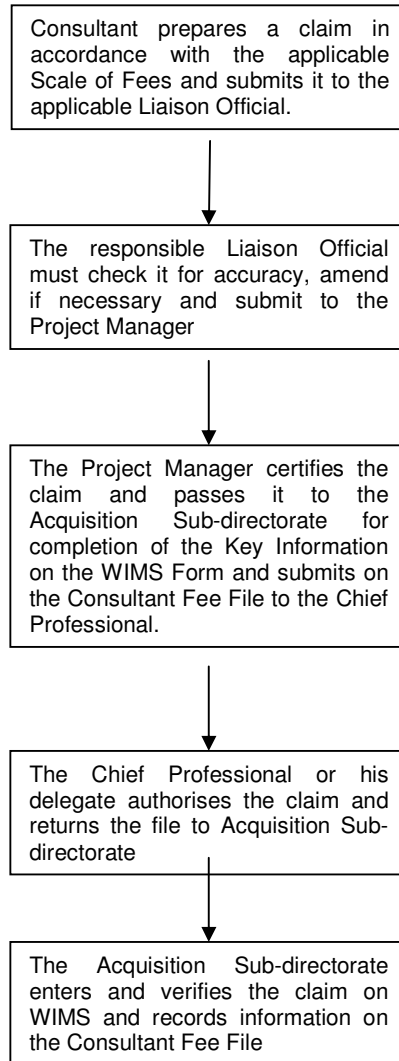
- (vii) Monthly Consultant Cash Flow - DOW033

These forms are contained at the end of this document under Letters and Forms.

It is a requirement that Consultants submit invoices to the Department for all fees and disbursements claimed.

5.14 CASH FLOW CHART FOR PROFESSIONAL FEE CLAIMS

CASH FLOW FOR PROFESSIONAL FEE CLAIMS



5.14.1 Procedure for Professional Fee Claims

In accordance with the appropriate Scale of Fees applicable to the particular professional discipline and as specified in the Department's letter of offer of commission, the Consultant prepares an invoice and a claim, calculated as a percentage of the cost of the Works. The Consultant must complete the appropriate designed WIMS forms (two), applicable for the particular profession.

The claim is to be submitted to the particular Departmental Professional Official for checking of correctness.

The particular Departmental Professional Official must examine and forward the claim to the Project Manager to consider and countersign and submit to the Acquisition Management Sub-directorate.

The Acquisition Management Sub-directorate must draw the particular Consultant's Fee file and complete the block titled "Key Information" and submit it to the delegated official for authorisation.

The delegated official, after authorisation must return the file to the Acquisition Management Sub-directorate.

Once the payment is approved, the responsible officials in the Acquisition Management Sub-directorate must enter the payment on WIMS (WM04PU) and the field "Payment Entered" on the WIMS Payment Form must be signed. The details of the payment must be entered into the Payment Register (date, WIMS number, WIMS contract number, Consultants name and amount). The payment must be verified on WIMS (WM07PU). The authorising signature on the payment document must be checked against the list of specimen signatures of officials authorised to approve payments, and be signed by the checking official in the field "Payment Verified".

N.B. All copies of documentation must be stamped "PAID" to prevent duplication.

All documentation must be filed on the Fee File.

When available the details of the payment (cheque number / date, batch and run number) must be entered into the Payment Register.

The Acquisition Management Sub-directorate must arrange to check the WIMS Batch Report and thereafter forward a copy of the documentation to the Accounting Services Sub-directorate, Head Office.

5.15 ELECTRONIC FUNDS TRANSFER: ELECTRONIC MEDIA (ACB)

As it is the policy of the Provincial Administration to eliminate fraud, it is preferred to make payments by means of Electronic Funds Transfer. Instead of having to draw cheques, contractors must provide details of their businesses bank accounts into which payments can be transferred via the Electronic Media (ACB).

The forms namely, WIMS 16-01, titled, "Beneficiary Registration Form" and WIMS 17-01, titled, "Financial Detail Certificate," which are completed by contractors, are contained at the end of this document under Letters and Forms. The forms have been prepared by the Works Information Management System Sub-directorate whose duty it is to capture the information provided by contractors. NO OTHER SECTION OF THE DEPARTMENT OF PUBLIC WORKS MAY PERFORM THIS DUTY.

In the case of Building Consultants, form WIMS 17-01, titled, "Financial Detail Certificate," must be completed.

Once bank account details have been captured by the Works Information Management System Sub-directorate, the information must be checked and verified by officials of the Accounting Services Sub-directorate of the Department and filed.

When payments are entered on the Works Information Management System for processing, the Payment Indicator on the Payment Function automatically moves to 6 (six). A Payment

Indicator 6 (six) means that the monies owed will be transferred via the Electronic Media (ACB), while a Payment Indicator 2 means that a cheque will be generated.

Payment Transaction Date

With effect from September 2002 the Administration effects all payments on a weekly basis, usually on a Monday:

5.16 MONTHLY CASH FLOWS AND PROJECT MANAGEMENT MILESTONE DATES

5.16.1 Project Management Milestone Dates

In dealing with "Interim Payments" and the procedures followed in processing such documentation, reference is made to completing and submitting form DOW034, titled, "Monthly Cash Flow - Contractor / Supplier / Lessor," and which is to be attached to the Interim Payment Certificate. Similarly, form DOW033, titled "Monthly Consultant Cash Flow," must be completed and attached to each professional fee claim. The intention of undertaking this exercise is to

- (i) control both the budget and expenditure and,
- (ii) provide the Department of Finance, and other Client Departments, with monthly cash flow predictions.

A computer generated predicted cash flow (also referred to as a 'default' cash flow) is produced on the Works Information Management System (WIMS) at outset, when a new service is registered by the Project Manager and when Consultants are appointed, based on Project Management milestone dates and applying an "approximate" estimate of cost. Various Tables depicting the standard times, in calendar days, for different types of valued services, are listed hereafter and are to be applied to determine the Project Management milestone dates. When Consultants are commissioned these dates must be determined during the briefing session.

STANDARD TIME FOR MILESTONES PER SERVICE

NOTE: CALENDAR DAYS INDICATED DO NOT INCLUDE FOR EITHER OVERLAPS OR CONCURRENT PROCESSES

NO	PERIOD TYPE CONTRACTS UP TO R 50,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	1		1
2	Receipt of planning instruction (from client)		3	4
3	Nomination/appointment of consultants			
4	Briefing of consultants			
5	Investigation and report			
6	Instruction to proceed (from client)		1	5
7	Sketchplans/issue to disciplines			
8	Estimates and reconciliation of norms			
9	Sketchplan committee	15		20
10	Instruction from client to proceed to documentation stage	3		23
11	Architects 1/100 section for Engineers			
12	Final Works drawings/estimates/norms			
13	Engineers drawings			
14	Draft bills, final estimate & norms			
15	Planning completion date	3		26
16	Final funds approval from client		3	29
17	Advertise tenders			
18	Tenders close			
19	Award contract	7		36
20	Handing over of site	7		43
21	First delivery certificate + hand over to client	60		103
22	Finalise delay report	14		117
23	Final delivery certificate	76		193
24	Final payment certificate	30		223

NO	PERIOD TYPE CONTRACTS R 30,000 TO R 1 000 000 (including VAT)	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		7
2	Receipt of planning instruction (from client)		21	28
3	Nomination/appointment of consultants	30		58
4	Briefing of consultants	14		72
5	Investigation and report	30		102
6	Instruction to proceed (from client)		14	116
7	Sketchplans/issue to disciplines	30		146
8	Estimates and reconciliation of norms	14		160
9	Sketchplan committee	14		174
10	Instruction from client to proceed to documentation stage		7	181
11	Architects 1/100 section for Engineers	45		226
12	Final Works drawings/estimates/norms	30		256
13	Engineers drawings			
14	Draft bills, final estimate & norms	30		286
15	Planning completion date	14		300
16	Final funds approval from client		7	307
17	Advertise tenders	10		317
18	Tenders close	21		338
19	Award contract	60		398
20	Handing over of site	21		419
21	First delivery certificate + hand over to client	200		619
22	Finalise delay report	30		649
23	Final delivery certificate	60		709
24	Final payment certificate	90		799

*DOW depicts Department of Public Works or Project Manager or Consultant

*Client depicts Client Department

*Period depicts Calendar Days

STANDARD TIME FOR MILESTONES PER SERVICE

NOTE: CALENDAR DAYS INDICATED DO NOT INCLUDE FOR EITHER OVERLAPS OR CONCURRENT PROCESSES

NO	PROJECT VALUE R 750,000 TO R 2,000,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		7
2	Receipt of planning instruction (from client)		21	28
3	Nomination/appointment of consultants	30		58
4	Briefing of consultants	14		72
5	Investigation and report	30		102
6	Instruction to proceed (from client)		14	116
7	Sketchplans/issue to disciplines	30		146
8	Estimates and reconciliation of norms	14		160
9	Sketchplan committee	14		174
10	Instruction from client to proceed to documentation stage		7	181
11	Architects 1/100 section for Engineers	45		226
12	Final Works drawings/estimates/norms	45		271
13	Engineers drawings			271
14	Draft bills, final estimate & norms	25		296
15	Planning completion date	14		310
16	Final funds approval from client		7	317
17	Advertise tenders	10		327
18	Tenders close	21		348
19	Award contract	60		408
20	Handing over of site	21		429
21	First delivery certificate + hand over to client	260		689
22	Finalise delay report	30		719
23	Final delivery certificate	60		779
24	Final payment certificate	30		809

NO	PROJECT VALUE R 2,000,000 TO R 5,000,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		
2	Receipt of planning instruction (from client)		30	37
3	Nomination/appointment of consultants	30		67
4	Briefing of consultants	14		81
5	Investigation and report	30		111
6	Instruction to proceed (from client)		14	125
7	Sketchplans/issue to disciplines	37		162
8	Estimates and reconciliation of norms	37		199
9	Sketchplan committee	15		214
10	Instruction from client to proceed to documentation stage		7	221
11	Architects 1/100 section for Engineers	45		266
12	Final Works drawings/estimates/norms	45		311
13	Engineers drawings			311
14	Draft bills, final estimate & norms	25		336
15	Planning completion date	14		350
16	Final funds approval from client		7	357
17	Advertise tenders	10		367
18	Tenders close	21		388
19	Award contract	42		483
20	Handing over of site	21		504
21	First delivery certificate + hand over to client	340		844
22	Finalise delay report	30		874
23	Final delivery certificate (30 days concurrent)	60		934
24	Final payment certificate	30		964

*DOW depicts Department of Work

*Client depicts Client Department

*Period depicts Calendar Days

STANDARD TIME FOR MILESTONES PER SERVICE

NOTE: CALENDAR DAYS INDICATED DO NOT INCLUDE FOR EITHER OVERLAPS OR CONCURRENT PROCESSES

NO	PROJECT VALUE R 5,000,000 TO R 10,000,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		7
2	Receipt of planning instruction (from client)		30	37
3	Nomination/appointment of consultants	30		67
4	Briefing of consultants	14		81
5	Investigation and report	30		111
6	Instruction to proceed (from client)		21	132
7	Sketchplans/issue to disciplines	45		177
8	Estimates and reconciliation of norms	37		214
9	Sketchplan committee	15		229
10	Instruction from client to proceed to documentation stage		7	236
11	Architects 1/100 section for Engineers	60		296
12	Final Works drawings/estimates/norms	90		386
13	Engineers drawings			386
14	Draft bills, final estimate & norms	40		426
15	Planning completion date	14		440
16	Final funds approval from client		7	447
17	Advertise tenders	42		489
18	Tenders close	42		531
19	Award contract	42		573
20	Handing over of site	21		594
21	First delivery certificate + hand over to client	430		1024
22	Finalise delay report	30		1054
23	Final delivery certificate	60		1114
24	Final payment certificate	30		1144

NO	PROJECT VALUE R 10,000,000 TO R 20,000,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		7
2	Receipt of planning instruction (from client)		30	37
3	Nomination/appointment of consultants	30		67
4	Briefing of consultants	21		88
5	Investigation and report	45		133
6	Instruction to proceed (from client)		30	163
7	Sketchplans/issue to disciplines	52		215
8	Estimates and reconciliation of norms	37		252
9	Sketchplan committee	15		267
10	Instruction from client to proceed to documentation stage		7	274
11	Architects 1/100 section for Engineers	75		349
12	Final Works drawings/estimates/norms	120		469
13	Engineers drawings			469
14	Draft bills, final estimate & norms	55		524
15	Planning completion date	15		539
16	Final funds approval from client		7	546
17	Advertise tenders	42		588
18	Tenders close	42		630
19	Award contract	42		672
20	Handing over of site	21		693
21	First delivery certificate + hand over to client	516		1209
22	Finalise delay report	30		1239
23	Final delivery certificate	60		1299
24	Final payment certificate	30		1329

*DOW depicts Department of Public Works

*Client depicts Client Department

*Period depicts Calendar Days

STANDARD TIME FOR MILESTONES PER SERVICE

NOTE: CALENDAR DAYS INDICATED DO NOT INCLUDE FOR EITHER OVERLAPS OR CONCURRENT PROCESSES

NO	PROJECT VALUE R 20,000,000 TO R 40,000,000	*DOW Period	*CLIENT Period	Cumulative
1	Preliminary estimate	7		7
2	Receipt of planning instruction (from client)		30	37
3	Nomination/appointment of consultants	30		67
4	Briefing of consultants	21		88
5	Investigation and report	45		133
6	Instruction to proceed (from client)		45	178
7	Sketchplans/issue to disciplines	67		245
8	Estimates and reconciliation of norms	37		282
9	Sketchplan committee	15		297
10	Instruction from client to proceed to documentation stage		7	304
11	Architects 1/100 section for Engineers	60		364
12	Final Works drawings/estimates/norms	90		454
13	Engineers drawings			454
14	Draft bills, final estimate & norms	70		524
15	Planning completion date	15		539
16	Final funds approval from client		7	546
17	Advertise tenders	42		588
18	Tenders close	42		630
19	Award contract	42		672
20	Handing over of site	21		693
21	First delivery certificate + hand over to client	600		1293
22	Finalise delay report	30		1323
23	Final delivery certificate	60		1383
24	Final payment certificate	30		1413

*DOW depicts Department of Work

*Client depicts Client Department

*Period depicts Calendar Days

Using form DOW042 titled "Project Management Milestones Dates For Projects / Services," enter against the various listed milestone steps, the "Start" and "Finish" dates for each stage of the process.

The dates recorded in the "Stage Start" Column are not recorded on WIMS and a copy of the form DOW042 must be placed on the "Project File" for reference purposes. In certain instances, some entered start dates for the different milestone steps will overlap with others.

The initial set of dates entered in the "Stage Finish" column will be regarded as the official planning dates for the project and are recorded on the WIMS computer system and provision exists to also enter both revised and actual completed dates for each milestone step and will be scrutinized for comparison purposes.

WIMS screens PBS1OU, PBS2OU, PBS3OU and PBS5OU must be consulted.

Every Project Management Milestone must be carefully controlled and adjusted regularly but at least on the following occasions:

- (i) April of each year until completion (last payment made to consultant)
- (ii) October of each year until completion (last payment made to consultant)
- (iii) Completion of sketch drawings.
- (iv) Completion of tender documentation.
- (iv) Site handover (first site meeting)

- (v) When delays of more than 30 days occur on site (even if not approved) or where the delay is not contractual.

Hard copies of reports must be kept on the Project File as whenever revised dates or financial changes are brought about on WIMS, data will alter and past information is lost.

5.16.2 Cash Flows

It must be understood that a computer generated cash flow (referred to as well as a default cash flow) is produced for all payments made to Consultants and Contractors at the following stages:

- (i) Appointment of Consultants
- (ii) Registration of the project during the planning stage

Thereafter the cash flow for Consultants and Contractors must be confirmed or adjusted on the following occasions:

- (i) April of every year until completion (last payment made to Consultant)
- (ii) October of every year until completion (last payment made to Consultant)
- (iii) Completion of sketch drawings estimate
- (iv) Completion of tender estimate
- (v) Acceptance of Tender
- (vi) Each payment made to a Consultant
- (vii) Each payment made to a Contractor

The authorised amount for a project is based on an approximate estimate at registration and must be revised with the approval of the Regional Manager or his delegatee on the following occasions:

- (i) Receipt of sketch drawings and estimate approvals from Client Department
- (ii) Receipt of tender estimate approval from Client Department
- (iii) Acceptance of Tender
- (iv) Authorisation of Variation Orders

Authorised amounts must include the following:

- (i) Contract Sum plus approved expansions of the Contract Sum during contract
- (ii) The Contingency Sum approved at the time that approval to accept a tender is given
- (ii) Where the contract documents provide for the payment of escalation, such escalation payments are then automatically authorised.

Consultants must be informed of the amounts authorised as the total annual cash flow must balance with this figure.

The authorised amount for professional fees is based on the project required plus disbursements, travelling, etc. This must be discussed with consultants on the basis of the letter of offer of commission and submitted to the Regional Manager or his delegatee for approval.

Once either form DOW033 (Consultant fee claims) or form DOW034 (Contractor payments) is completed, each signed by both the Consultant and Project Manager and entered on WIMS, the determined financial data will be regarded as the authoritative estimates. Nevertheless, these estimates will not be regarded as contractually binding between the Department and Consultant or Contractor.

In completing either form DOW033 (Consultant fee claims) or DOW034 (Contractor payments), it would be logical to first complete the Monthly Cash Flow column and then transfer that Total to the Annual Cash flow column, entering that sum in the Year O space. Thereafter, enter the actual past expenditure incurred on the project in the provided spaces for Year-1, Year-2, etc. Future anticipated expenditure must be entered in spaces provided for Year+1, Year+2, etc.

It will be the responsibility of the Regional Office, the Acquisition Management Sub-directorate, to update the WIMS Cash Flow data when payments are made or at any other time when requested to do so. All such documentation must be placed on the Payment File but will not form part of the financial source documents forwarded to the Accounting Service Sub-directorate, Head Office for further action.

The following WIMS screens are used to capture Monthly Cash Flow data:

- (i) DOW033- Monthly Consultant Cash Flow
Monthly Cash Flow Column - WE36PU
Annual Cash Flow Column - WE59PU
- (ii) DOW034- Monthly Cash Flow - Contractor / Supplier / Lessor
Monthly Cash Flow Column - WE03PU
Annual Cash Flow Column - WE13PU (services)
Annual Cash Flow Column - WE54PU (contracts)

5.16.3 Cash Flow For Orders (Once-off Payments on 1450 Orders)

The estimated month of payment for an order must be indicated at date of order and registered on WIMS. It is a standing instruction that orders must be registered within seven (7) days of the date of placing the order.

5.17 VARIATION ORDERS

A variation order can be defined as an instruction authorised by the Head: Public Works to vary a contract by addition or omission of work which is necessary to safeguard the interests of the Province, provided that no expenditure in excess of the authorised financial provision results therefrom.

5.17.1 Information On Variation Orders

Note:

Wherever professional disciplines are mentioned below, it must be read to mean a Works Inspector should there not be a professional commissioned. The Works Inspector should request professional assistance should he be of the opinion that he is not suitably qualified or experienced to prepare a particular Variation Order.

It must be made clear at all times that a site instruction does not constitute a Variation Order;

All site instructions must be endorsed to state whether the instruction constitutes a Variation Order, or not, after consultation with the Consultant Quantity Surveyor / Consultant Engineer / Works Inspector.

When a site instruction is endorsed "Variation Order required" this must be processed as soon as possible to allow for the official Variation Order to be issued timeously.

Before Variation Orders are issued, costs and availability of funds are to be established by the Project Manager, in collaboration with the Consultant Quantity Surveyor and Consultant Architect. In the case of civil or structural engineering Works, the Project Manager must discuss the financial and other implications with the Consultant Civil or Structural Engineer. Similarly, in respect of any electrical or mechanical requirements, the financial implications must be discussed with the Consultant Electrical and Mechanical Engineers.

Variation Orders in respect of variations to the plan, additional accommodation, facilities or amenities or superior finishes can only be issued with the prior authority of the Head : Public Works. All Variation Orders recorded in site meeting minutes are to be followed up by an official Variation Order.

Variation Orders are to be issued as promptly as possible.

Variation Orders are to be signed by the Project Manager unless it falls outside of his/her delegated authority. Should the variation alter the scope of the contract or a revised layout in a plan, it must be submitted to the Plans Approval Committee for approval.

Provisional Sums in the Bills of Quantities must be omitted as soon as the tender for the Works has been awarded. After a tender for that portion of the work has been accepted, the tendered amount must be added back.

A copy of all Variation Orders issued for any authorised deviation from the working drawings or specifications or for any extras or omissions shall be furnished to the Consultant Quantity Surveyor / Consultant Engineer / Works Inspector.

All alterations, additions and omissions for which Variation Orders have been issued during the currency of the contract shall be measured, adjusted and valued by the Consultant Quantity Surveyor / Consultant Engineer / Works Inspector. All items measured provisionally must be omitted and added back at actual re-measured cost, via a Variation Order.

Whenever the Specification of any items changes, be it a provisionally measured item or "fixed" item, it must be covered by a Variation Order (as required by the Conditions of Contract) as aside from the budgeting implications, it alters the Contract.

All variations must be measured and valued as soon as possible after they have been received and when the work to which they relate has been carried out, included in subsequent payments to ensure that the escalation applicable to the variation is calculated as near to the time it was executed as possible.

The Project Manager, Consultant Architect or other Consultants must supply the Consultant Quantity Surveyor / Consultant Engineer with as much information as they are able to for the purpose of measuring the Variation Order. Any additional information required by the Consultant Quantity Surveyor / Consultant Engineer / Works Inspector must be obtained by

him through on site measurements, from the Works Supervisor (if there is one appointed) or otherwise.

When variation drawings are necessary, these are to be prepared by the consultants concerned, severally or collectively. If the variation is of an architectural nature only and does not affect the structure or the electrical or other service lay-out, only architectural drawings will be required. If the structure and / or the electrical and mechanical layouts are affected, the necessary drawings must be prepared by the consultant(s) concerned and co-ordinated by the Consultant Architect. An estimate of costs for all work on the Variation Order must be prepared and the Consultant Architect must indicate to the Head: Public Works whether funds are available or not.

Normally five copies of all drawings necessary for each and every Variation Order must be prepared by the Consultant Architect / Consultant for contract administration purposes and all these drawings are to be handed to the Architect for distribution as follows:

- (I) Three (3) copies to the Main Contractor
- (II) One (1) copy to the Liaison Architect / Project Manager
- (iii) One (1) copy to the Head: Public Works
- (iv) One (1) copy to the Works Inspector

Should the Consultant Quantity Surveyor / Consultant Engineer note from time to time and in the preparation of the final account that there are omissions or extras not covered by Variation Orders, he shall draw the attention of the Consultant Architect to this and recommend that Variation Orders be issued.

Both the Bid Adjudication Committee and Client Department must be approached to grant additional authorities where cost implications of a draft Variation Order exceeds the financial limit already approved.

5.17.2 Utilisation of Contingency Sums and Variations to Contract Sums

In terms of SCM Delegation 7.1.2 Contingency Sums requested can only be to the maximum amounts indicated below and which must be approved by the Regional Manager IN RESPECT OF QUOTATIONS (UP TO R500 000):

- (i) Building Works 5% of contract amount
- (ii) Structural, Electrical or Mechanical 10% of contract amount
- (iii) Civil Works 15% of contract amount
- (iv) Repairs, Renovations and Alterations 15% of contract amount

It is the policy of the Department for expediency purposes to grant approval for a Contingency Sum at the time when a contract award FOR A TENDER (ABOVE R500 000) is made. Because of this policy, SCM Delegation 7.1.2. has already been exercised. The Contract Sum is the accepted tender amount. The Project Manager, with the approval of the Regional Chief Professional may authorise the use of the approved Contingency Sum when unexpected situations arise that would prevent the specifications of the contract being complied with, unless attended to.

An extract from the KwaZulu-Natal Provincial Treasury's Circular No. 2 dated 28 May 2002 is quoted for information and its content must be strictly observed:-

(Please note that although it is no longer necessary to approach the Central Procurement Committee (CPC) of the KZN Treasury Department for approval, the

content and principle of the circular is still pertinent. Approval of Variation Orders are granted Departmentally under the present SCM Delegations of Authority)

- “2. The awarding of contracts for building and civil construction services is usually accompanied by the approval of a contingency sum. For building Works this should be limited to 5% of the contract sum and for engineering, (civil, structural, electrical and mechanical) this should be limited to 10%.
3. Recent applications for variations to these contingency sums and contract values have revealed that some departments have been utilising contingency sums for inappropriate services.
- 4a). The CPC has noted that variation orders are issued on contracts for which contingency amounts are used or variations to contract sums are made. *Ex posts facto* applications are then submitted to the CPC to condone deviations from normal procurement procedures in these instances.
- 4b). The committee has also noted with grave concern that in many instances variation orders are issued for work that is not specified as part of the contract and is unrelated. For example, a contract may be awarded to paint an office, but whilst the contractor is present it is decided to also replace an eaves, gutter and rainwater down pipe.
- 5a). The CPC is strongly of the view that variation orders should only be issued for work that falls within the strict definition of a contingency. That is, contingency sums are only to be used where in the normal performance of a contract, unexpected situations arise that would prevent the specifications of the contract being complied with, unless the matter is attended to.
- 5b). Contingency sums may not be used for any work not specified in the contract, even if it may be thought “convenient to utilise a contractor already on site.” Variation orders should also not be issued for work that is not specifically provided for the contract, unless directly related to the contract in question.
6. If situations arise that do require variations to contract sums, applications must be made to the CPC for authority to vary the scope of contract. Before a department varies the scope of a contract and the resultant contract sum, prior approval must be obtained from the CPC.
7. The co-operation of Accounting Officers is thus enjoined in ensuring careful monitoring of the use of variation orders in their departments for appropriate application of contingency sums and requests for prior approvals to the CPC for variations to contract sums.
8. Applications to the CPC for approval to vary contingency sums for variation orders, not relating to contracts will be considered very strictly in terms of this circular, and would normally not be approved unless very convincing reasons to the contrary are provided.
9. This circular will be of immediate effect and it should be noted that the CPC is not introducing a “new” set of rules, but merely implementing strictly the correct application of contingency sums.”

5.17.3 Clarification in regard to the matter of Variation Orders and the related Financial Implications

FOR CONTRACTS WITH BILLS OF QUANTITIES AND FOR LUMP SUM CONTRACTS:

- (i) Provisions are contained in both Agreements (JBCC and GCC) for the issue of Variation Orders and the scope thereof i.e. the contractual right to vary a contract.
- (ii) In terms of SCM Delegation 7.1.4, for approval by the BAC, a limitation is placed on the extent to which a contract may be contractually varied i.e. a total decrease or increase of not more than five (5%) for Building Works, ten (10%) for Structural and Electrical Works, fifteen (15%) for Civil Works and fifteen (15%) for Repairs, Renovations and Alterations of the Contract Sum inclusive of any contingency sum. In terms of SCM Delegation 7.1.3, for approval by either the Regional Manager or Deputy Manager, a limitation is placed on the extent to which a PERIOD CONTRACT may be contractually varied i.e. a total decrease or increase of not more than ten (10%) (approval by Deputy Manager) and fifteen (15%) (approval by the Regional Manager) of the Contract Sum inclusive of any contingency sum. The reason for a limit is to protect the interests of both the Contractor and the Employer by preventing possible exploitation.
- (iii) When considering the issue of a Variation Order not only the contractual constraints but also the financial constraints are to be taken into consideration.
- (iv) If a contract is varied by omissions of up to the percentages of the Contract Sum as stated in 5.17.3 (ii) above, the only financial consideration is the effect on cash flows.
- (v) In the process of obtaining approval to award a contract (or to accept a tender) and making such an award or acceptance, financial authority to spend funds on the project is obtained. The financial authority relates to the Contract Sum and any approved Contingency Sum only. At the time of giving approval to award a contract (or to accept a tender), the approving body (i.e. Departmental Bid Adjudication Committee) will consider and, if thought fit, approve a simultaneous request for the allowance of a Contingency Sum (Building Works – 5%, Structural, Electrical or Mechanical Works – 10%, Civil Works – 15%).
- (vi) Essentially unexpected situations which could have the effect of causing contractual problems if not remedied i.e. affect the intended normal execution of the contract.
- (vii) When a Variation Order is being considered for additional work, then the following must be the case:
 - (a) There must be savings effected in relation to the work originally included in the contract e.g. as a result of the re-measurement (where applicable) of foundations, or other work which was provisionally measured in the first instance, through the

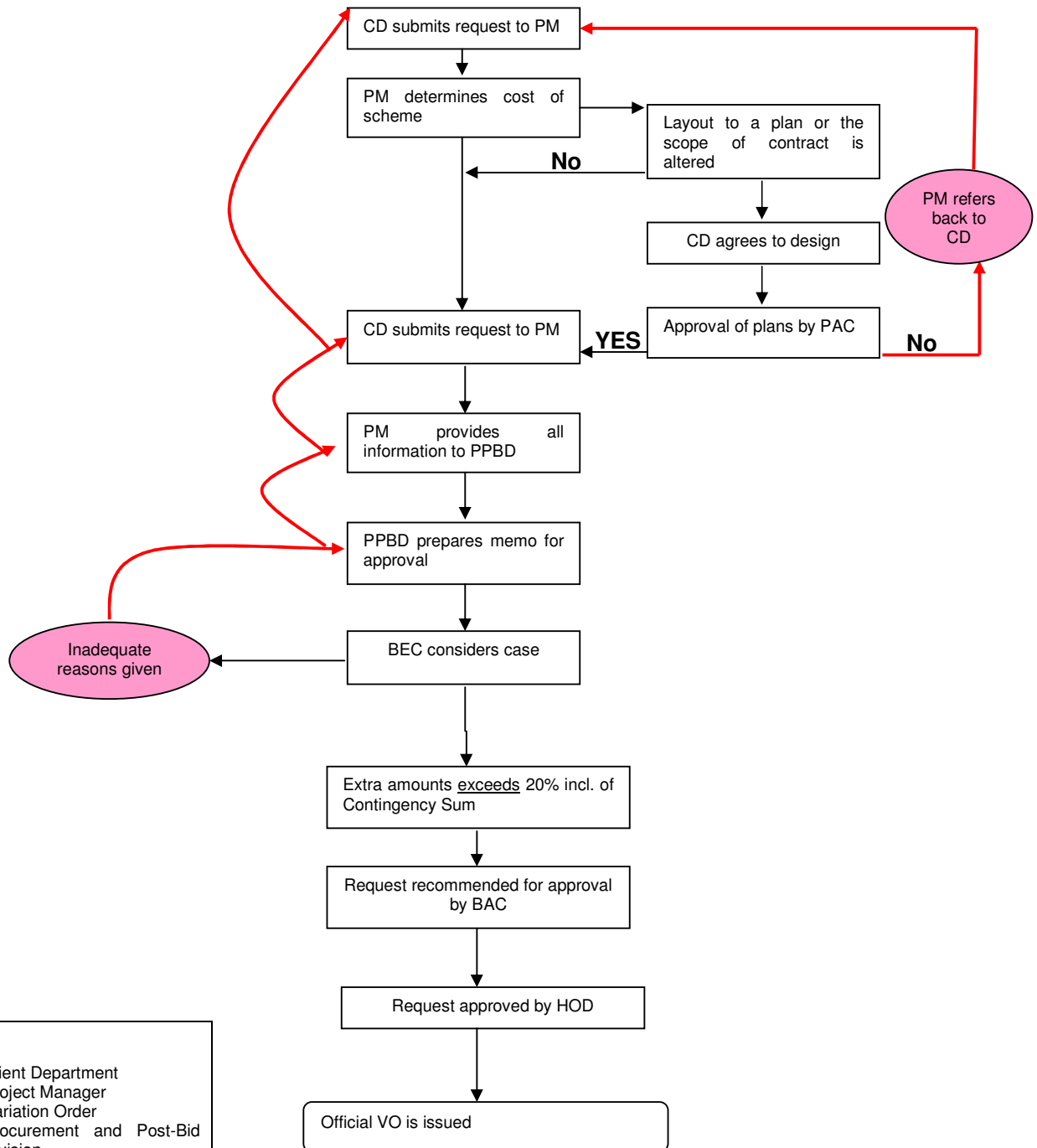
substitution of materials or the omission of work originally included in the tender document;

AND/OR – AS THE CASE MAY BE

- (b) There must have been prior approval sought and gained of an application for expansion of the Contract Sum in order to cater for the proposed additional work. Such additional work must not be of such a nature that could be executed under a separate contract, either simultaneously with the contract in progress or at a later stage. Bear in mind that *ex post facto* applications if not approved by the Bid Adjudication Committee will then become audit queries which will cause embarrassment to the Department and be reflected as “unauthorised expenditure”.

5.17.4 Processing of Variation Orders Increasing Contract Sum – Flow Chart

The below Flow Chart depicts the process to obtain approval to pass a variation order in terms of SCM Delegations 7.1.2 (approved at the time a Contract Award is made) and 7.1.4 (approved by BAC to expand a Contract Sum) (decrease or increase Contract Sum by not more than 15%, inclusive of Contingency Sum) for new Work that exceeds the percentages as defined in the two said Delegations of Authority.



Key:

CD - Client Department
 PM - Project Manager
 VO - Variation Order
 PPBD - Procurement and Post-Bid Division
 BEC - Bid Evaluation Committee
 BAC - Bid Adjudication Committee
 PA - Principal Agent
 PAC - Plans Approval Committee

NB: Application to extend the Practical completion date must be made

5.17.5 Requests For The Issue Of Variation Orders

5.17.5.1 Contingency Sum Variation Orders for which Approval has already been Granted at Contract Award Time

Tenders

It is the policy of the Department for expediency purposes to grant approval for a Contingency Sum at the time when a contract award is made FOR TENDERS. Because of this policy, SCM Delegation 7.1.2. has already been exercised. The Contract Sum is the accepted tender amount. The Project Manager, with the approval of the Regional Chief Professional may authorise the use of the approved Contingency Sum when unexpected situations arise that would prevent the specifications of the contract being complied with, unless attended to. It is suggested as a means of providing a summary of the financial position of the Contract, Form DOW037A titled "Financial request For Variation Order And, If Necessary, Additional Funds" is completed and submitted to the Regional Chief Professional for consideration of approval accompanied by a submission of explanation.

Quotations

Where the approved Contract Sum is to be exceeded for unforeseen or additional new Work either SCM Delegation 7.1.2 (normal Quotations) or SCM Delegation 7.1.3 (Period Contracts) must be exercised. It is suggested that Form DOW037B titled "Financial request For Variation Order And, If Necessary, Additional Funds" is completed and submitted to the Regional Chief Professional/Regional Manager for authorisation accompanied by a submission of explanation.

5.17.5.2 Variation Orders for Expansion of Contract Sum (To Vary Scope of Works) : SCM Delegations 7.1.4 and 7.1.5

Requests for the issue of Variation Orders must be forwarded to the BAC for authorisation **where the approved contingency sums have been exceeded** (i.e.

- (i) Building Works 5% of contract amount
- (ii) Structural, Electrical or Mechanical 10% of contract amount
- (iii) Civil Works 15% of contract amount
- (iv) Repairs, Renovations and Alterations 15% of contract amount) as per

SCM Delegations 7.1.2 and 7.1.3 and arranged in the following manner:

- (i) The Project Manager, in collaboration with Consultant Quantity Surveyor / Consultant Engineer will prepare the draft variation order required for approval, using form DOW035 accompanied by a submission of explanation.
- (ii) Simultaneously, paragraphs 1 to 4 of form DOW037A or DOW037B titled "Financial Request For Variation Order And Additional Funds", must be completed and the form submitted to the Regional Office for onward submission to the BAC.
- (iii) In the event of additional funds being necessary, the Project Manager must arrange to submit clear and accurate supplementary reasons for the request and, if necessary, accompanied by the comments and approval of the Client Department, if an extra to requirements is involved.
- (iv) After checking the financial approvals granted by the Client Department or Department of Public Works, the Procurement and Post Bid Division must ensure that form DOW037A or DOW037B titled "Financial Request For

Variation Order And Additional Funds” has been properly completed. The Procurement and Post Bid Division must in conjunction with the Responsibility Manager, arrange for the requirements as set out in paragraph 5 of form DOW037A or DOW037B, titled “Financial Request For Variation Order And Additional Funds” to be completed in the case of a Department of Public Works project.

- (v) The Procurement and Post Bid Division must record the request for funds using screen WJ02PU (WJ01PE) on the Works Information Management System.
- (vi) Once paragraph (iv) above has been arranged and signed by the Responsibility Manager in the case of a Department of Public Works project, the matter must be submitted to the Bid Adjudication Committee to consider or not to approve in terms of SCM Delegations 7.1.4 or 7.1.5,
- (vii) On approval the information recorded on the Works Information Management System is correct and arrange to accept the various authorisations on screen WJ07PU (WJ08PE) and the Project Manager issues the Variation Order (DOW026 or by way of letter) to the Contractor.
- (viii) Using form DOW036, the Procurement and Post Bid Division must arrange to have the approved Variation Order typed and signed by the Project Manager or the delegatee and distribute copies to:
 - (a) the Contract/Project/Payment File
 - (b) the Contractor
 - (c) the Project Manager
 - (d) the Consultants involved and,
 - (e) the Works Supervisor, if applicable.
- (ix) All correspondence relating to the matter must be placed on the Project File.

5.17.6 Payment To Contractors In Respect Of Work Covered By A Variation Order

Under no circumstances can payment to a Contractor in respect of work covered by a draft Variation Order and duly executed by the Contractor be refused or delayed because the administrative procedures relating to the issue of the official Variation Order have not been finalised. If this happens, the Department will be in breach of Contract.

5.18 CESSION OF CONTRACT

For a variety of reasons including voluntarily ceasing to trade, lack of capacity, financial difficulties, etc., a Contractor may request approval to cede a contract to another contractor. In the event of insolvency, a Liquidator may also request approval to cede a contract to another contractor. In such cases, approval must be obtained from Head: Public Works in terms of SCM Delegation 7.5.1. It must be noted that the contractor to whom it is proposed that the contract be ceded must be registered on both the Provincial Suppliers Database and with the CIDB with the appropriate Grading Designation class.

The forms properly completed by both parties to the proposed cession must be submitted to Head: Public Works under cover of a submission in which the background to the contract and the reasons for the proposed cession are clearly set out. The submission must

be forwarded via the Chief Directorate: Operations and the Office of the Chief Financial Officer. Please refer to Specimen 6 contained under Letters and Forms of this document for an example of the submission to use.

5.19 SEQUESTRATION/ LIQUIDATION OF ESTATE OF CONTRACTOR

Poor financial circumstances of a contractor could result in the delay of Works or even failure to proceed with due diligence. This could lead to consideration being given to cancel the contract.

A contractor could apply to sequester his estate, or publish notice of surrender of his estate or presents a petition for the acceptance of the surrender of his estate as insolvent or, if a company or close corporation, could go into liquidation (provisionally or finally).

Project Managers, Principal Agents and the members of the Acquisition Management Sub-directorate must carefully monitor poor performance of contractors and take swift action to prevent financial losses and loss in time in completing contractors.

All Project Managers and the Acquisition Management Sub-directorate must inspect the Government Gazette for the names of contractors who have applied for sequestration of their estates or who have gone into liquidation and arrange to deliver notices to the trustees or provisional trustee or the liquidator or provisional liquidator.

Officials must apply to the Policy Development and Quality Control Directorate (attention Library Manager) to be placed on the mailing list for the receipt of Government Gazette notices.

5.20 FINANCIAL CONTROL

The Project Manager shall be responsible for the financial control of the project in all its stages and shall ensure that it is executed within the authorised financial provision.

Project Managers shall utilise the expertise of appointed consultants to exercise financial control.

No over-expenditure is permitted on any Provincial building contract. The contract sum (including provisional sums and the contingency sum, separately authorised) must be regarded as the absolute expenditure limitation (except for escalation and professional fees) for the main contract.

When the tender amount replaces the provisional sum in the Bills of Quantities and, is less than the provisional sum, the balance must NOT be regarded as a saving which may be used elsewhere on the contract.

5.21 COST CONTROL SYSTEM

Consultants must ensure that a Cost Control System (preferably computerised) is in place as a backup, in order to be able to furnish the Monthly Cash Flow Reports which are captured on WIMS for financial control and budgeting purposes.

5.22 FINANCIAL AND BUDGET CONTROLS

The official financial year begins on the 1st April of one year and ends on the 31st March of the following year.

Project Managers must obtain regular Monthly Cash Flows from Consultants.

The Department of Public Works is required by the Department of Finance to furnish a monthly projection of cash flow. The Office of the Chief Financial Officer and the Programme Management Sub-directorate in the Department of Public Works provide the overall cash flow projections, based on the information contained on the Works Information Management System. Similarly, Client Departments must be appraised continuously of cost changes for projects to enable them to manage their budgets and furnish the Department of Finance with monthly cash flows.

5.22.1 Financial Reports

Financial Reports are required in order that a constant check may be kept on the estimated final cost against the amount authorised (i.e. the contract sum, any authorised contingency allowance, fees and any authorised additional expenditure).

It is essential that these reports are up to date in order that, where additional funds are required, they are sought at the time and not *ex post facto*.

The Project Manager must compare the costs for the contract and fees against funds are required, they are sought at the time and not *ex post facto*.

Changes in excess of 5% (up or down) of the total cost must be brought to the attention of the Project Manager and the Projects Programme Manager as it may require that the estimates or authorised amounts be altered. (Estimates and authorised amounts are used as the total costs for projects in the Cost Reports and are submitted to Client Departments).

5.22.2 Reasons for excessive cost changes must be furnished.

Consultant Civil and Structural and Consultant Electrical and Mechanical Engineers must submit copies of their financial reports to the Consultant Quantity Surveyor in order to enable the amounts to be included in the quarterly Financial Reports.

The costs of all Variation Orders must be included in the Financial Reports.

Adjustment of Preliminaries items must NOT be regarded as an automatic authority and must be allowed for in all Financial Reports.

Escalation is an automatic authority, and must be included in Financial Reports.

Professional fees must be included in the Financial Reports using Form DOW039. The cost of the contract and fees must be reported but added up to a grand total.

Where a substantial change has occurred (commonly regarded as 5% up or down) in the latest Financial Report, since the previous one, the reason for the change is to be clearly stated.

Financial Reports for projects with a contract period of 6 months and less need not be reported, unless it is clear that there would be a substantial change in costs.

Financial Reports must be submitted to the Regional Programme Manager under signature of the Project Manager in accordance with the Financial Report, DOW038 and which are contained under Letters and Forms.

Once the Programme Manager has noted the result, the Project Manager must ensure that the information has been captured on the Works Information Management System.

Financial Reports must be submitted for all projects (between design stage and the final payments of contracts and professional fees) no later than 1 April, 1 July, 1 October and 1 January of each year.

5.23 BUDGET REPORTS : MONTHLY CASH FLOWS

The Monthly Cash Flows (forms DOW033 and DOW034) serve as Budget Reports and are required to assist in estimating the actual amounts that will be spent on a project in each financial year.

The reports on expenditure must include escalation. Escalation must be included in the years that it is paid. Calculations for escalation to be included in the Budget Reports must be set out in the estimates of escalation. The formula to apply follows hereafter.

Retention monies must be included in Monthly Cash Flows for the year that the retention will be paid out.

When an amount is stated to be expenditure in a previous year, it must be the exact amount certified by the Consultant Quantity Surveyor / Consultant Engineer before the 31st of March of the previous year.

When a project has been completed but the final account / final payment is not anticipated to be paid in the same financial year, allowance must be made in the subsequent year for this payment.

Monthly Cash Flow Reports must be submitted for all projects in planning where expenditure is possible in the current or subsequent financial year.

5.24 CALCULATION OF ESCALATION FOR BUDGET REPORTS

(i) Post Contract (in progress) Services

When estimating escalation for budget forecasts, consultants should use the following formula, in order that all cost estimates be on a uniform basis.

$$A \times \frac{85}{100} \times \frac{3}{5} \times E \times \frac{P}{12}$$

where	A	=	Tender amount
	E	=	Anticipated annual escalation Based on Haylett Formula indices.
	P	=	Time in months from base month to month of completion.

(ii) **Pre-contract (proposed services)**

In addition to the escalation calculated over the anticipated contract period, in terms of the formula in (i) above, escalation should be calculated on the period from the month of estimate of building cost to the anticipated base month (i.e., month prior to anticipated tender date), based on the predicted building cost indicators issued by the Bureau For Economic Research.

5.25 COMPLETION CERTIFICATE (“Practical Completion”)

This is the stage reached in the contract, as described in the particular Agreement, dealing with the Completion Certificate.

5.25.1 Pre- Inspection

When the Contractor has stated that, in his opinion, the Works are complete and ready for occupation, the Consultant Architect or Consultant Engineer in the case of an Engineering Project together with other Consultants concerned (e.g. Electrical and Mechanical), the Project Manager, and the Client Department’s Planner or his authorised representative must carry out an inspection of the Works.

Where necessary, any outstanding work, defects or inadequacies, in terms of the Contract, are to be listed and such list handed to the Contractor for attention.

The list is for guidance only and is not to be deemed to be all-inclusive. It must also not be used by the Contractor to relieve him of his responsibilities in terms of the Contract.

5.25.2 Practical Completion

On completion of all unsatisfactory or incomplete Works, a further inspection will be carried out by the Consultant Architect or Consultant Engineer in the case of an Engineering Project, other Consultants concerned, the Project Manager and the Contractor, Regional Manager and the Client Department’s Planner or his authorised representative and, if the Works are acceptable, “Practical Completion” will be taken. The Regional Manager will take possession of the project.

The Project Manager, must advise the Procurement and Post Bid Division, in writing, that “Practical Completion” of the Project has been taken by using Form DOW043, titled Certificate of Completion.

Where phased Sectional “Practical Works Completion” as specified in the actual tender document are taken, similar certificates must be written for each phase taken over. When “Practical Completion” for the entire project is eventually taken, the same form DOW043, is used but adapted to record this very fact.

The Project Manager must arrange the preparation of a Key Schedule and obtain all keys from the Contractor, to which suitable identifying tags must be securely attached.

Arrangements are to be made for the keys of the section and completed work to be handed to and signed for on behalf of the Client Department concerned.

In all instances, except for projects for the Department of Health, the following original Certificates are to be obtained by the Consultant Architect from the Contractor for forwarding to the Regional Manager in respect of a Building Contract.

- (i) Certificate of Compliance by an Accredited person of the Electrical Installation.
- (ii) Truss Design Certificate, if applicable. (TR1 & TR2)
- (iii) Pest Control Certificate of Warranty.
- (iv) Structural Engineers Certificate of Safety.

Arrangements are also to be made for the handing over to the Regional Manager, of all operating and maintenance manuals as specified / required in the tender documents.

A separate schedule of requirements in respect of projects for the Department of Health is in the course of preparation

Both the Client Department and the Regional Manager must initiate arrangements to enter into maintenance contracts for items of equipment such as lifts and air-conditioning.

“Practical Completion” of the project is captured on WIMS (WG03PU).

5.26 UNSATISFACTORY WORK PERFORMANCE BY A CONTRACTOR

It is most important for the Project Manager to monitor the progress of work on each service. Where the project has fallen behind schedule, without valid reasons, the circumstances must be reported in writing to the Head: Public Works. It is essential for this to take place as the Head: Public Works may then direct an official written communication to the Contractor, requesting that the work performance be improved whilst also drawing attention to the provisions of the relevant clauses dealing with Progress, Penalty For Non-Completion and others of the Contract. A letter of this nature must be handed to the Contractor and a signature of acknowledgement of receipt must be obtained in case it becomes necessary to cancel the contract in terms of the Contract. Clearly the Contractor must be given the opportunity to respond to the allegations in writing. It is also preferred that a meeting be arranged with the Contractor to discuss the problems and attempt to find solutions with proper minutes of the meeting being kept.

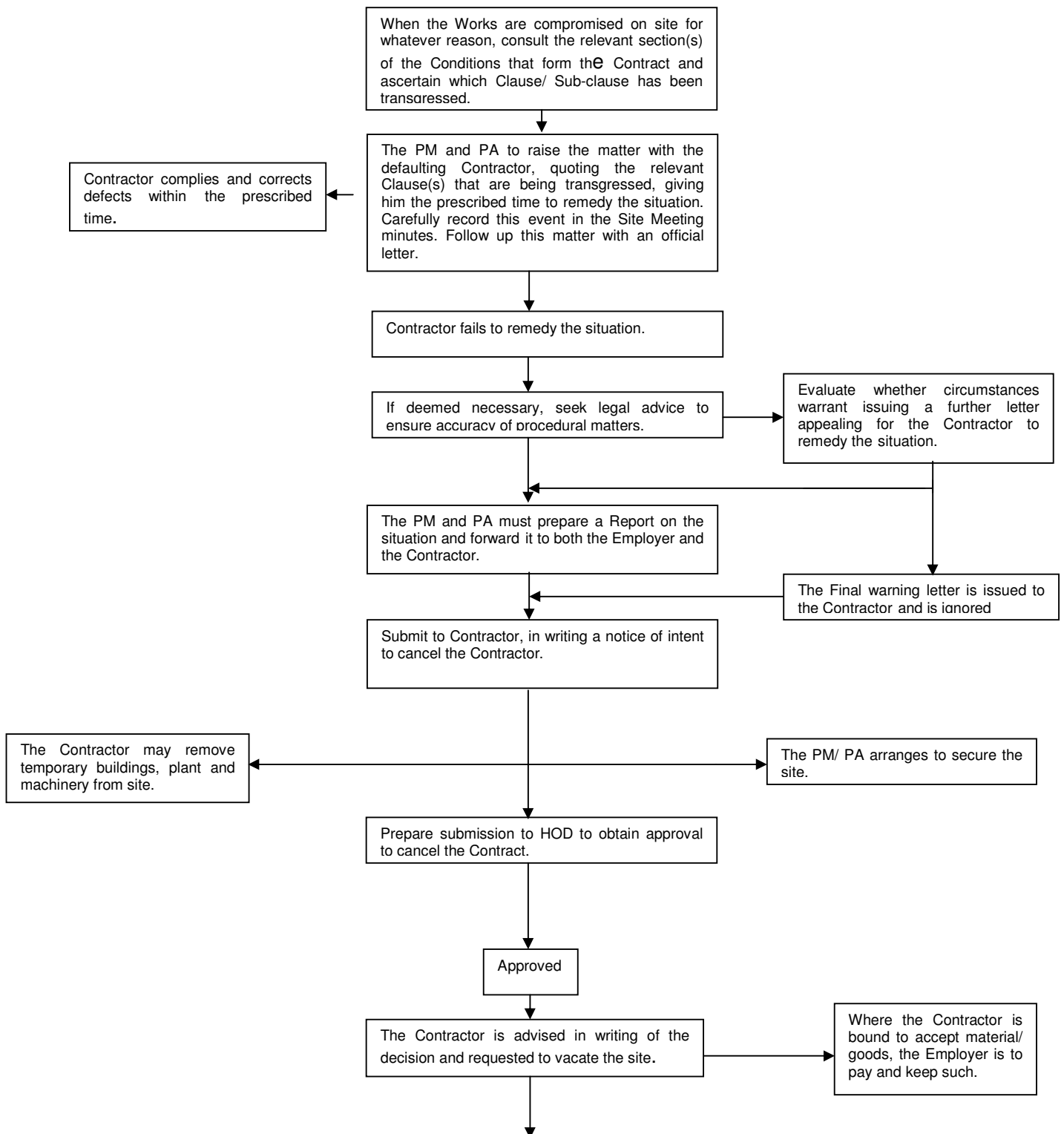
Unless the Head : Public Works acts correctly in terms of the Contract and has proper evidence of default, cancellation of a contract cannot be contemplated. This type of situation must not be allowed to occur as the Contractor would not be prevented from tendering on other work. Lost time in completing projects (e.g. facilities not being available for occupation) could be regarded by the Auditor-General as wasteful expenditure, for which the Head: Public Works (Accounting Officer) would be held accountable.

It is for these reasons that make it necessary for a record to be kept on the work performance of Contractors. The information furnished with the submission of the Contract Completion Report and Contractor's Analysis Report (discussed later in this document) will assist in building up a database of work performance by contractors. Preferably, this information should be captured on computer and be accessible to those responsible for the adjudication of tenders.

In cases where a Contractor defaults in any of the aspects provided for in the Contract and all attempts to remedy the situation have failed it may be necessary to cancel the Contract. In this event a comprehensive submission setting out all the details of the contract (include the financial circumstances of the Contract covering monies due and owed and how much can be offset by the guarantee held describing the default and steps taken to remedy matters and requesting approval to cancel the Contract must be prepared (See also Section 8 of the SCM Delegations). The Head: Public Works on receipt of a submission may grant approval to cancel a contract (SCM Delegation 7.4.1 refers).

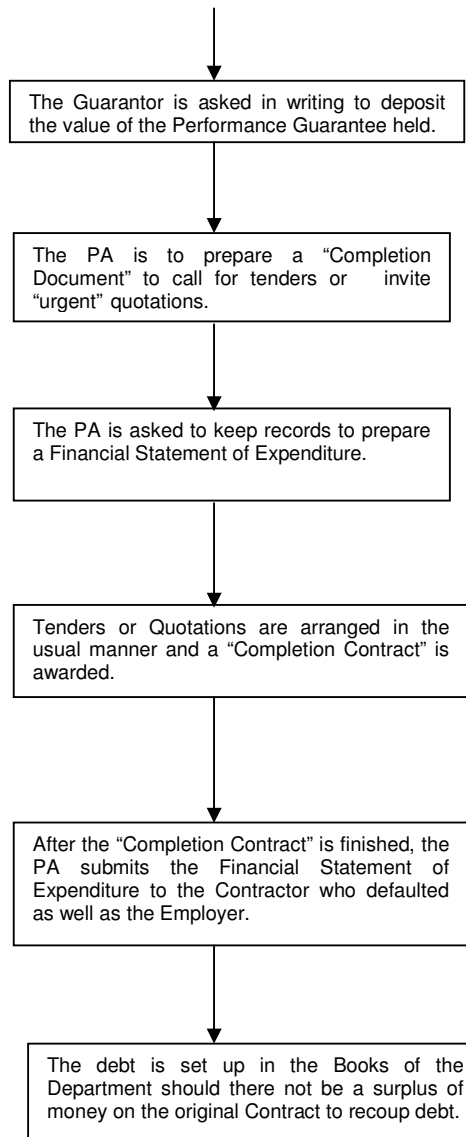
5.27 GUIDELINES FOR CANCELLATION – TERMINATION OF A CONTRACT

The below Flow Chart provides the framework to cancel/ terminate a Contract.



Continued on next page

Continued from previous page



Legend

PM = Project Manager

PA = Principal Agent

HOD = Head of Department

5.27.1 Guidelines

Approval to cancel/ terminate a contract is undertaken applying the Supply Chain Management (SCM) Delegations of Authority (SCM Delegation 7.4.1). The conditions under which a Contract may be cancelled/ terminated is according to the applicable Engineering or Building Conditions of Contract.

IT IS OF UTMOST IMPORTANCE THAT THE SUBMISSION SEEKING APPROVAL TO CANCEL A CONTRACT BE TREATED WITH EXTREME URGENCY AS PENALTIES ACCRUE UP TO THE DATE OF THE CANCELLATION OF THE CONTRACT AND THE CONTRACTOR WOULD HAVE BEEN ASKED TO REMOVE HIMSELF AND HIS WORKMEN FROM THE SITE IN THE NOTICE SERVED OF THE INTENTION TO CANCEL THE CONTRACT.

DELAYS THAT ARISE IN OBTAINING APPROVAL TO CANCEL A CONTRACT WILL RESULT IN THE CONTRACTOR HAVING TO PAY ADDITIONAL UNJUST PENALTIES. THIS WILL LEAD TO THE CONTRACTOR DECLARING A DISPUTE THAT WILL CAUSE THE MATTER TO BE REFERRED TO ADJUDICATION OR MEDIATION, WHICHEVER IS STATED IN THE CONTRACT DATA. CLEARLY AN ADOPTED DISPUTE RESOLUTION WHETHER BY AN ACCEPTED ADJUDICATION DECISION OR AN ARBITRATION AWARD OR COURT JUDGEMENT WILL BE EXPENSIVE AND IF THE CASE IS LOST, THE EXPENDITURE WILL HAVE TO BE REFLECTED IN THE ANNUAL FINANCIAL STATEMENTS OF THE DEPARTMENT AND THE AUDIT-GENERAL MAY VIEW THIS COST AS FRUITLESS OR WASTEFUL.

***NB.** While the below procedures primarily cover the way in which the Employer can cancel a contract with a Contractor, sight must not be lost of the fact that a Contractor can also cancel a contract with the Employer and the Contract Agreements used by the Department provides for a Contractor to exercise this right, if he so desires. The conditions under which a contract with the Employer can be cancelled by a Contractor have been indicated in the below text.*

5.27.1.1 Application of Different Contracts to Cancel a Contract

Because the KZN Department of Public Works makes use of three (3) different Contracts, namely JBCC Principal Building Agreement, JBCC Minor Works Agreement and the General Conditions of Contract (GCC) for Construction Works to administer its contracts, each one has been briefly discussed below, as they are applicable to the cancellation of a contract.

5.27.1.2 JBCC Principal Building Agreement

Under this Contract there are specific Clauses that cover different aspects under which a contract may be cancelled and the salient points surrounding these identified categories are summarised below.

Clause 36 – Cancellation By Employer – Contractor's Default

36.1 The Employer may cancel the Agreement where the contractor:

36.1.1 Fails to comply in terms Sub-clauses 15.1 and 15.3 (Preparation For And Execution Of The Works)

36.1.2 Refuses to comply with a contract instruction subject to Sub-clause 17.2 (Contract Instructions) or fails to repair damages in terms of Sub-

clause 8.0 (Works Risk) and repair defects in terms of Sub-clauses 25.0 (Works Completion) and 26.0 (Final Completion)

- 36.2 The Principal Agent on the instructions of the Employer notifies the Contractor *in writing* in terms of Sub-Clause 36.1. This notice shall be issued without prejudice to any rights that the Employer may have.
- 36.3 The Principal Agent may give *written* notice of cancellation should the Contractor remain in default for ten (10) working days after the date of issue of such a notice of default.

Clause 37.0 Cancellation *By Employer* – Loss And Damage

37.1 The Employer may cancel the Agreement where:

- 37.1.1 The completed portion of the Works constructed has been substantially destroyed howsoever caused
- 37.1.2 The Works is for alterations and/ or additions to an existing building, which has been substantially destroyed howsoever caused
- 37.2 The Principal Agent on the instructions of the Employer notifies the Contractor *in writing* of the intention to cancel in terms of Sub-Clause 37.1.

Clause 38.0 Cancellation *By Contractor* – Employer's Default

38.1 The Contractor may cancel the Agreement where Employer fails to :

- 38.1.1 appoint agents in terms of Sub-clauses 5.1 and 5.4 (Employer's Agents)
- 38.1.2 give possession of the site to the Contractor in terms of Sub-clauses 15.2 (Preparation For And Execution Of The Site)
- 38.1.3 provide a payment guarantee in terms of Sub-clause 3.1 (Documents)
- 38.1.4 issue any payment certificate in terms of Sub-clauses 31.0 (Interim Payment To The Contractor) and Sub-clause 34 (Final Account And Final Payment)
- 38.1.5 issue a statement to the Contractor in terms of Sub-clause 31.13.1 (Interim Payment To The Contractor)
- 38.1.6 pay the amount certified in terms of Sub-clauses 31.9 (Interim Payment To The Contractor) or 34. 10 (Final Account and Final Payment)
- 38.1.7 prevents the Principal Agent from exercising his independent judgement regarding the performance of his duty and the Contractor being prejudiced by such action
- 38.2 Where the Contractor considers cancelling the Agreement, notice is given to the Employer *in writing* and the Principal Agent in terms of Sub-Clause 38.1. Should such default persist for ten (10) working days after the date of issue of such notice, the Contractor may give notice of

cancellation *in writing* to the Employer and the Principal Agent. Such cancellation shall be without prejudice to any rights that the Contractor may have.

Clause 39.0 Cancellation – Cessation Of The Works

39.1 **Either party** may cancel the agreement on the cessation of the Works for a continuous period stated in the Schedule. Where such Party considers cancellation of the Agreement, notice *in writing* shall be given to the other Party. Should the other Party not object *in writing* within ten (10) working days of the date of issue of the cancellation notice, notice of cancellation may be given to the affected Party.

5.27.1.3 JBCC Minor Works Agreement

Under this Contract there are specific Clauses that cover different aspects under which a contract may be cancelled and the salient points surrounding these identified categories are summarised below.

Clause 15.0 Termination By Employer

15.1 The Employer may terminate the Agreement where the Contractor defaults by failing to:

- 15.1.1 provide the security (Sub-clause 2.2 - Security And Guarantees) and the Employer elects to terminate in terms of Sub-clause 2.4 – Security And Guarantees – where the site has not been handed over
- 15.1.2 execute the Works in terms of Sub-clause 7.1.2 (Contractor) and the Contractor on being given the site fails to commence with the Works within the period stated in the Contract Data and does not:
 - Proceed continuously, industriously and with due skill and appropriate physical resources
 - Comply with all Contract Instructions as defined in Sub-clause 6.2 (Employer's Agents)
 - Bring the Works, within the Construction Period, to Practical Completion in terms of Sub-clause 9.0
 - Bring the Works to Final Completion in terms of Sub-clause 10.0 (Final Completion And Latent Defects Liability)
- 15.1.3 comply within a reasonable period with a Contract Instruction issued in terms of Sub-clause 6.2 (Employer's Agent)
- 15.1.4 Continue work on site without reasonable cause for more than a continuous period of ten (10) Working Days
- 15.1.5 provide evidence of insurance where responsible in terms of Sub-clause 3.4 (Risk And Insurance)
- 15.2 The Principal Agent on the instructions of the Employer notifies the Contractor *in writing* of the intention to terminate should the default continue for five (5) working days.

5.27.1.4 General Conditions Of Contract (GCC)

Under this Contract there are specific Clauses that cover different aspects under which a contract may be cancelled and the salient points surrounding these identified categories are summarised below.

Clause 54 Cancellation Of The Contract

This Clause deals with the cancellation of a Contract due to

- An outbreak of war
- Armed hostilities
- The imposition of economic sanctions between Governments
- Any other action of a like kind
- An emergency declared by the Government
- If a riot, commotion, politically motivated sabotage, acts of terrorism or disorder should occur

These incidences are beyond the control of the Contractor. Until the contract is cancelled in terms of this Clause, the Contractor is to use his best endeavours to complete the execution of the Works. **Either the Employer or the Contractor shall**, if such state of affairs continues or for two or more periods aggregate not less than forty (40) normal working days in a period of six (6) months, **be entitled to cancel the Contract** by notice in writing to the other party and, upon such notice being given, the Contract shall (save as to the rights of the parties under this Clause) terminate forthwith BUT without prejudice to the rights of either party in respect of any antecedent breach thereof **or if the Employer shall undertake to bear any resultant additional costs** involved in continuing the Works, the **Contractor shall not** exercise his right to cancel the Contract.

Clause 55 Termination *By Employer*

55.1 The Employer may terminate the Contract if

- Application is made for the sequestration of the Contractor's estate
- The Contractor publishes a notice of surrender of his estate or presents a petition of the acceptance of the surrender of his estate as insolvent
- Makes a compromise with creditors or assigns in favour of his creditors or agrees to carry out the Contract under the supervision of a committee representing his creditors
- Goes into liquidation (being a company), whether provisionally or finally (other than a voluntary liquidation for the purpose of amalgamation or reconstruction)
- The Contractor assigns the Contract without having first obtained the Employer's consent in writing
- If execution is levied on his goods

Where in the opinion of the Employer, the Contractor:

55.1.1 Has abandoned the site

55.1.2 Has failed to commence with the Works in terms of Clause 10 (Commencement Of The Works) or has suspended the progress of the Works for fourteen (14) days

55.1.3 Has failed to proceed with the Works with due diligence

- 55.1.4 Has failed to remove materials from site or to pull down and replace work within fourteen (14) days where written notice that the said materials or work have been condemned and rejected
 - 55.1.5 Is not executing the Works in accordance with the Contract, or is neglecting to carry out his obligations under the Contract
 - 55.1.6 Has, to the detriment of good workmanship or in defiance of instructions to the contrary, sublet any part of the Contract
 - 55.1.7 Has assigned the Contract or any part thereof without the Employer's consent in writing
 - 55.1.8 The Contractor or anyone on his behalf or in his employ would pay, offer or offer as payment to any person in the employ of the Employer a gratuity or reward or commission
 - 55.1.9 Has furnished inaccurate information in the Schedules forming part of the Contract
- then the Employer may, after giving fourteen (14) calendar days notice *in writing* to the Contractor, terminate the Contract and order the Contractor to vacate the Site and to hand over the Site to the Employer, and the Employer may then enter upon the Site and the Works and expel the Contractor therefrom without affecting the rights and powers conferred on the Employer or the Engineer by the Contract.

Clause 56 Cancellation *By Contractor*

- 56.1 The Contractor may cancel the Contract where the Employer:
 - 56.1.1 Repudiates the Contract, fails to pay the Contractor the amount due within the time of payment provided in the Contract or interferes with or obstructs the issue of any certificate
 - 56.1.2 Having his estate sequestrated (provisionally or finally) or, being a company or close corporation, going into liquidation (provisionally or finally)
 - 56.1.3 Assigning the Contract without the consent *in writing* from the Contractor, the Contractor may, by *written* notice to the Employer, cancel the Contract.

Procedure for the Cancellation – Termination of a Contract

- 5.27.2 In cases where a Contractor defaults in one of the aspects provided for in the Contract and all attempts to remedy the situation have failed, it might be necessary to cancel/ terminate the Contract. At this juncture it must be stated that site minutes and other evidence of letters written to the Contractor must be traced and referred to with regard to issuing warnings:
 - (i) To rectify defects ***or***
 - (ii) To attend to the Works ***or***
 - (iii) To proceed with due diligence ***or***
 - (iv) To remove materials from site ***or***
 - (v) To pull down and replace defective work ***or***
 - (vi) To execute the Works in accordance with the Contract ***or***
 - (vii) *Where* without authority the Contractor has assigned the Contract or part thereof to another contractor ***or***
 - (viii) *Where* any part of the Contract has been sublet ***or***
 - (ix) *Where* a gratuity or reward or commission has been paid to any person in the employ of the Employer ***or***
 - (x) *Where* inaccurate information in terms of the Scope of Work has been furnished.

- 5.27.3 As a back up to the already issued letters and site minutes, a detailed Report (the status of the Works executed by the Contractor must be stated) dealing with the circumstances surrounding the case must be drawn up by the Project Manager/ Consultant and issued to both the Employer and the Contractor and it is to be kept as a record of the particular default.
- 5.27.4 The Contractor is to be given in writing, notice of the intention to cancel/ terminate the Contract. This letter must give background to the case and state the relevant Clause(s)/ Sub-clause(s) of the particular Conditions of Contract that have been transgressed and the Contractor *must be given the opportunity to remedy the situation within a period as is indicated in the Contract Data*. A delegated official who is authorised to sign a Contract of equivalent value must sign this letter. The Regional Manager must be made aware of the circumstances of the case before action is taken. This letter must be posted by Registered Mail and forwarded by facsimile transmission to the Contractor. The transmission report of the facsimile as well as the Registered Mail number must be placed on file as evidence of delivery of the letter.
- 5.27.5 Should it become necessary the Directorate: Legal Services can be approached for advice and/ or an opinion with regard to contentious matters. Depending upon the contract in use, the South African Institution of Civil Engineering or the Joint Building Contracts Committee can be approached as well for assistance and advice.
- 5.27.6 In the event of the Contractor failing to rectify a fault/ defect or comply with an instruction within the specified period stated in the Contract Data, a comprehensive submission to cancel the Contract must be prepared setting out all the details of the Contract (include the financial circumstances of the Contract covering monies due and owed and how much can be offset by using the Performance Guarantee held). The submission must describe the default as well as the steps taken as an endeavour to remedy matters (this can be backed by attaching letters, site minutes, reports, etc.). In terms of SCM Delegation 7.4.1, the Head: Public Works has the authority to cancel a Contract.
An example of the submission to use to seek approval to cancel/ terminate a Contract is set out in Specimen 11
- 5.27.7 During the intervening period between obtaining approval to cancel the Contract and employing another contractor to complete the Works, the Employer (Project Manager) must ensure that the site is safeguarded. This could involve engaging other parties to safeguard the Works, the cost of which must be recovered from the defaulting Contractor.
- 5.27.8 Once approval has been granted to cancel the Contract, the Contractor and all persons involved with the project must be informed in writing of the decision including the fact that the cost to employ another contractor will be recovered from the defaulting Contractor. The letter must also cover the following other aspects:
- (i) The Contractor is to remove himself and his workmen from site including his temporary buildings, plant and machinery (this should be arranged under the supervision of the Employer or delegated person to ensure that no material already paid for is taken) and
 - (ii) The Employer will pay for the cost of materials and goods including those ordered before cancellation/ termination where the Contractor is bound to accept such and make payment therefor. The Contractor is to hand over such material and goods to the Employer in good order.

This letter must be posted by Registered Mail and forwarded by facsimile transmission to the Contractor. The transmission report of the facsimile as well as the Registered Mail number must be placed on file as evidence of delivery of the letter.

- 5.27.9 The Employer is to issue the appointed Consultant(s) or Departmental Professional personnel (if documented "in-house"), to urgently proceed with the preparation of "Completion Documents" and to keep record of additional costs in having to arrange for another contractor to complete the Works. Additional costs that may arise subsequent to the cancellation of the Contract due to changes to the original Scope of Works must be kept separate and not added for recovery from the defaulting Contractor. "Guidelines" to format Financial Statements of expenditure for cancelled/terminated contracts have been dealt with in a separate paragraph elsewhere in this Chapter. Letter DOW308 must be adapted to suit the particular case.
- 5.27.10 The Guarantor (approved financial institution) must be called upon to surrender the value of the Performance Guarantee held in favour of the KZN Department of Public Works
- Letter DOW105 must be used for this purpose. These monies are to be used to offset the cost to engage another contractor to complete the Works.
- 5.27.11 On completion of the Financial Statement of Expenditure, the defaulting Contractor is to be informed of the end result and the Final Account is to be drawn up. The Contractor can be paid in the event there being a surplus. Where there is a shortfall of funds, steps must be taken to recovery this money from the Contractor.
- 5.27.12 A copy of the Financial Statement of Expenditure must be forwarded to the Expenditure Control Division to set up the debt in the books of the Department should there not be a surplus of funds available on the original Contract to recovery the amount owed by way of deduction from the Final Payment.

5.28 GUIDELINES TO FORMAT A FINANCIAL STATEMENT OF EXPENDITURE TO DETERMINE A SHORTFALL OR A REFUNDABLE BALANCE WHERE A "CONTRACT IS CANCELLED/ TERMINATED" AND A "COMPLETION CONTRACT" IS ENTERED INTO

In following the Guidelines set out below, cognisance must be taken of the actual circumstances and peculiarities that exist with each particular contract/ project.

Contractual escalation is to be excluded from all calculations for the reason that comparative escalation cannot be calculated. In terms of the Original Contract, the Department was committed to pay whatever escalation was contractually due to the Contractor on the basis that the Contract would proceed normally.

In preparing a Financial Statement of Expenditure, only reflect those items that are applicable and for which monetary amounts can be determined or are available.

EXAMPLE

**ORIGINAL CONTRACT
FINANCIAL STATEMENT OF EXPENDITURE**

(A) Committed Cost To Department

(i) Original Contract Sum (excluding VAT)	R
(ii) Add/ Less Adjustment (excluding VAT) in respect of written work instructions (preferably official Variation Orders) not related to the originally provisionally measured work but issued to the Original Contractor before cancellation of the Contract, even though the work was not completed by the Original Contractor before the cancellation of the Contract	R _____ R
(iii) Less Value (excluding VAT) originally provisionally measured work in Original Contract	R _____ R
(iv) Less Value (excluding VAT) of work included in the Original Contract but subsequently omitted from Completion Contract (but not re-measured) – priced at Original Contract rates	R _____ R
(v) Add Value (excluding VAT) of re-measured work that was provisionally measured in the Original Contract and was executed by the Original Contractor prior to cancellation of The Contract	R _____ R
(vi) Add Value (excluding VAT) of re-measured work that was provisionally measured in the Original Contract but was executed by the Completion Contractor – priced at the Original Contract rates	R _____ R

(B) Payments Made To Original Contractor

(i) Actual Payments Nos 1 to	R
(ii) Less Amount of Value-Added Tax in (b) (i) above	R _____ R
(iii) Add Retention deducted in (b) (i) above	R _____ R
(iv) Less Escalation included in (b)(i) above	R _____ R
(v) Add Penalties deducted in (b) (i) above	R _____ R

EXPENDITURE TO DATE

R _____

NB. Normally, there should have been no direct payments made during the course of the Original Contract, except possibly direct payments for service connection fees and, if Provisional Sums had been approved for inclusion in the Original Contract and as a result of default by the Original Contractor, the Department had made direct payments to remedy such default, then all such direct payments must also be reflected in the above Table of Expenditure.

(C) Completion Cost

- (i) Amount (excluding VAT) of Tender Recommended For acceptance/ Contract Sum/ Final Cost per Final Account (excluding penalties imposed on Completion Contractor) R
- (ii) **Add** Any direct payment (excluding VAT) relating to work included in payments to Original Contractor but not paid to intended recipients for which official approval was given for direct payments (e.g. by way of Court Order) R
..... R
- (iii) **Less** Escalation (excluding VAT) included in the Final Account (if applicable) R
..... R
- (iv) **Less** Cost of any new work (excluding VAT) included in (C) (i) above that was not part of the Original Contract or in terms of an Instruction/ Official Variation Order issued to the Original Contractor R
..... R
- (v) **Add** Fees, etc., (excluding VAT) incurred in preparing new Tender Documents for the Completion Contract and any other officially approved Administration costs incurred by Consultants as a result of cancelling the Original Contract
(a) Consultant Architect (give name) R
(b) Consultant Engineer (C&S) (give name) R
(c) Consultant Engineer (E&M) (give name) R
..... R
- (vi) **Add** Expenditure incurred subsequent to cancellationof Original Contract up to award of Completion Contract
(a) Security Service up to ...
(NB At a cost of R___ per month, excluding VAT) R
(b) Any other items (excluding VAT) R
- Completion Cost**..... R

SUMMARY OF COSTS

(1) TOTAL COST OF PROJECT

(i)	Expenditure in payments to Original Contractor as per (B) above	R
(ii)	Add Completion Cost as per (C) above	R
	R
(iii)	Add Value Added Tax	R
	R
 Total Cost of Project	R

(2) FUNDS AVAILABLE FOR PROJECT

(i)	Committed cost as per (A) above	R
(ii)	Add Value Added Tax.....	R
	R
(iii)	Add Amount of Performance Guarantee, if available to be called up	R

Funds Available R

(3) SHORTFALL OR SURPLUS

(i)	Funds Available as per (2) above	R
(ii)	Less Total Cost of Project as per (1) above	R
	Shortfall (-) / Surplus (+)	R

Notes Relating To Any Surplus of Funds

- (i) If a Performance Guarantee has been called up, then the surplus up to the amount of the Performance Guarantee is to be refunded to the Guarantor. With any balance over and above the sum of the Performance Guarantee this is to be paid to the Original Contractor or his Estate.
- (ii) If no Performance Guarantee was available to be called up, then any surplus is to be paid to the Original Contractor or his Estate.
- (iii) Interest will be charged on debts to the State at the interest rate determined by the Minister of Finance in terms of Section 80 of the PFMA (Act No. 1 of 1999), as amended. The interest percentage as stated in the Tender Document must be applied.

5.29 BARRING OF CONTRACTOR

In a serious case, the SCM Component of the Department should be approached to consider whether or not to bar a Contractor from tendering for work for a period of time. Should it be agreed to bar/ suspend a Contractor for default or poor performance, the Pre-Bid and Adjudication Divisions of the Department, including the Professional and Technical personnel must be informed as to the outcome in the matter. In addition the same components and personnel should be kept informed by the Procurement and Post-Bid Division of contractors who are performing poorly so that this fact can be taken into recognition when adjudicating tenders. Similarly the Performance and Compliance Sub- directorate of the Supply Chain Management Directorate of the Department needs to be appraised of contractors who are/ have been performing poorly or who have been suspended/ barred.

Cases of default or poor performance must also be reported to the CIDB who may consider de-registering contractors.

5.30 REPORTING OF DEBT

Should it occur that because of default on a contract or a cancellation of a contract and a debt results that cannot be offset and recovered from monies owed to the State (in this case the Department of Public Works) by the defaulting contractor and/or the security held is inadequate to cover the loss, the case must be reported to the Chief Financial Officer (Expenditure Control Division) to set up the debt in the books for the Department. Interest will be charged on debts to the State at the interest rate determined by the Minister of Finance in terms of Section 80 of the PFMA (Act No. 1 of 1999), as amended.

All debts and losses to be recovered or written off must be reflected in the Annual Report and Financial Statements of the Department for tabling in the Provincial Legislature by the Auditor-General. The write-off of debts is arranged by the Loss Control Services Section.

5.31 CONTRACT COMPLETION REPORT, CONTRACTOR'S ANALYSIS REPORT AND IMPOSITION OF PENALTY

After issue of the Practical Completion Certificate, the Procurement and Post Bids Division must append, in triplicate, the following forms for the Principal Agent's completion and return:

- (i) Contract Completion Report, form DOW046 This form relates, *inter alia*, to the matter of penalties, if applicable, and
- (ii) Contractor's Analysis Report Form DOW047. This form is completed to determine the Contractor's work performance capabilities and if in the future, further contracts could be awarded to the contractor or not.

Note: These reports are required only at the stage when the entire contract is completed and not after each section is taken over.

The Consultant Architect / Consultant Engineer is to keep one copy of each form for record purposes and return the other two sets to the Regional Office, Attention: Procurement and Post Bids Division.

The Procurement and Post Bids Division must forward one copy of each form to the District Office for noting and record keeping purposes.

The third copy of each form must be actioned as follows by the Procurement and Post Bids Division.

- (i) Record details of penalty imposed, if applicable, and the written information provided by the Consultant Architect / Consultant Engineer or Project Manager concerning the overall effectiveness of the performance of the Contractor, by transposing (typing) the content of form DOW047, titled, "Contractor's Analysis Report," onto WIMS (WI05PU). Similarly, the WIMS must be updated using screens WG03PU (Update: Tender / Contract Detail) and WG07PU (Update: Delay Report) by entering the information contained on form DOW046, titled "Contract Completion Report". It is the responsibility of the Project Manager to ensure that these actions are carried out as the WIMS has been designed to collectively record each contractor's work performance on every project undertaken. With this banked information, officials involved in either adjudicating tenders can consult the WIMS Reports for historical data.
- (ii) If a penalty has been imposed, prepare a schedule or extract and attach the WIMS Reports (referred to above), giving details of all work previously done and letters of warning, notifying the Contractor of intention to approach the SCM Component of the KZN Treasury to bar the firm and its directors, members and partners from tendering for future work for the Province, for a period of time. Attach as well other evidence, Site Minutes reports, etc that may illustrate the poor circumstances surrounding the case.
- (iii) Refer the matter to the Regional Manager for a decision.
- (iv) Should it be recommended that SCM Component of the KZN Treasury should be approached to have the firm and its directors, members or partners barred for a period of time, prepare a letter to the Contractor informing him of such, and giving him five (5) days from date of receipt of the letter to respond.
- (v) Whether you receive a response or not, refer the matter back to the Regional Manager for reaffirmation of the decision taken previously.
- (vi) If re-affirmed, prepare a submission to SCM Component of the KZN Treasury and forward it to the Regional Manager with the requisite number of copies for onward transmission to the Bid Adjudication Committee, who after consideration of the matter will arrange for it to be signed by the Head: Public Works and forwarded to SCM Component of the KZN Treasury.
- (vii) The secretariat to the Departmental Bid Adjudication Committee will forward same to SCM Component of the KZN Treasury for consideration.
- (viii) Should SCM Component of the KZN Treasury agree with the recommendation of the submission, it will notify the Contractor of its decision and arrange to publish the fact.
- (ix) Place the forms on the Project File, and one extra set is to be made for the "Contractors' File".
- (x) Where a penalty is imposed for late delivery of a service, form DOW062 if a tender or DOW062Q if a quotation, must be issued to the Contractor, with endorsements to all concerned with the contract. In this letter the calculated number of days by which the contract period has been

exceeded and the penalty amount to be imposed are indicated. These letters are contained at the end of this document under Letters and Forms.

5.32 APPROPRIATION (AS BUILT) DRAWINGS

On completion of the contract, the Consultant Architect/ Consultant Engineer must in all instances except for projects for the Department of Health, hand over to the Regional Manager, free of charge, one complete set (and the drawing information stored on electronic storage medium if available) of all drawings, detail and variation drawings used for the contract signed and dated by the Consultant as well as any other relevant maintenance documentation. These must be “as-built” drawings showing all amendments effected during the course of construction of the Works. Each drawing must be stamped “As Built” and filed as such.

No final payment of fees will be made until these “as built” drawings have been received and accepted by the Department.

Where the Consultant Architect/Consultant Engineer has prepared these drawings, the following are of particular importance.

- (i) Foundation layouts.
- (ii) Hot and cold water reticulations accurately showing pipe routes, depths, pipe sizes and materials, locations of control valves, stop cocks, etc.
- (iii) Sewer and storm water reticulations accurately showing pipe routes, inverts, pipe sizes and materials, inspection chambers, rodding eyes, gullies, sumps, etc.
- (iv) Electrical reticulation accurately showing cable routes, depths, sizes, locations of main switch, control panels and distribution boards.
- (v) Fire protection reticulation accurately showing pipe routes, depths, pipe sizes and materials, hydrants, hose reels, sprinkler control valves.
- (vi) Air-conditioning, heating and ventilation installations and control switches.
- (vii) Details of other services e.g. medical gas, steam, etc.
- (viii) Manuals for all items of equipment installed under the contract containing specifications, operating and maintenance instructions.
 - (a) These drawings will be referred to by Maintenance Personnel when carrying out emergency repairs as well as routine maintenance and will form the “as-built” appropriation drawings records.
 - (b) The Library Section of the Department of Public Works based at 191 Prince Alfred Street, Pietermaritzburg must be given these drawings for safekeeping. All “As Built” drawings are kept at this central point, which acts as an IT store of records.
- (ix) A separate schedule of requirements in respect of projects for the Department of Health is in the course of preparation

5.33 FINAL COMPLETION (DELIVERY)

5.33.1 Building Work

Two weeks before the expiry of the defects liability (maintenance) period, the Consultant Architect / Consultant Engineer/Project Manager must contact the Regional Manager, District Office Inspectorate personnel and the Client Department to ascertain whether the Works are satisfactory and ready for final completion inspection.

The inspection must include all those items listed as needing attention at “Practical Completion” Stage, including any latent or patent defects, which may have manifested themselves during the defects liability period.

Final Completion may only be taken once the Consultant Architect / Consultant Engineer / Project Manager are / is satisfied that the Works are complete and all defects have been rectified.

Where, in terms of original tender/contract document, phased/ sectional completion have been taken, phased/ sectional completion may be taken. The Consultant / Architect / Consultant Engineer / Project Manager must identify nominated sub-contracts which have a defect liability (maintenance) period which will expire after the main contract maintenance period and notify, in writing, the Head : Public Works of such. To assist in this task one of the following forms are used, depending on the type of Final Completion taken:-

- (i) Certificate of Final Completion Electrical & Mechanical Work - Form DOW048
- (ii) Certificate of Final Completion Building Work - Form DOW051
- (iii) Certificate of Final Completion Civil Work - Form DOW050

All of these forms are contained under Letters and Forms.

In terms of the GCC these Certificates are referred to as “The Final Approved Certificate”.

5.33.2 Nominated Sub-Contracts

The same procedure as outlined above for “Building Work”, i.e., the main contract, is followed.

The final completion (delivery) of the project must be captured on WIMS (WG10PU).

5.34 FINAL ACCOUNT

5.34.1 Responsibility for Preparation Of Final Account

It shall be the responsibility of the Project Manager to obtain from the Consultant Quantity Surveyor or Civil / Structural Engineer or Electrical / Mechanical Engineer or Works Control Inspector the Final Account preferably within three (3) months after Final Completion. If the three (3) month period is exceeded then monthly reports on progress, with reasons for the delay, are to be submitted by the Project Manager to the Regional Manager.

5.34.2 Details To Be Included In The Final Account

The Final Account must include all Variation Orders, including those resulting from the Main Contractor's claims and omissions and additions.

When the final figure has been agreed to, the Preliminaries items must be adjusted.

The adjustment of the Provisional Sums and Prime Cost Items including profit, attendance, etc., where applicable, must be included.

5.34.3 Settlement Of Final Account

The responsible Consultant / Official must settle and agree the account in accordance with the Contract with the Contractor. Only where no agreement can be reached must the particular Departmental Chief Professional be approached for a ruling.

When the final account has been agreed, the DRAFT Final Account must be submitted to the Consultant Architect / Consultant Engineer / Project Manager for scrutiny, whereafter the approval of Regional Manager must be gained.

In the case of final accounts for services based on Bills of Quantities, the Regional Manager may refer the Draft Final Account to the Departmental Quantity Surveyor based in the Regional Office for scrutiny and in this event, the Departmental Quantity Surveyor shall, after he is satisfied in all respects with the Draft Final Account complete, sign and date the "Departmental Quantity Surveyor – Final Account Checklist" (form DOW044) and return same together with the Draft Final Account to the Regional Manager. In the case of a quotation Form DOW044A titled "Departmental Official – Final Account Checklist – Contract Entered Into By Of Quotations" must be completed.

In the case of final accounts for services based on Lump Sum Contracts the responsibility for scrutiny of the Draft Final Account rests with the Project Manager but the Regional Manager may refer same to a Departmental Architect based in the Regional Office for his scrutiny.

Once approved, and in the case of contracts based on Bills of Quantities, the Summary of Variations, Adjustment of Preliminaries Pages and the Final Statement are typed. See "Specimen 5" included in this document under Letters And Forms.

In the case of Lump Sum Contracts, the Summary of Variations and the Final Statement are typed – see Specimen 9 included in this document under Letters And Forms.

In the case of a Quotation Contract, the Summary of Variations and the Final Statement are typed – see Specimen 12 included in this document under Letters And Forms.

All the details and workings of the Final Account must be retained by the Consultant / Official for at least **three** years after Final Payment. After this period has lapsed, the approval of the Head: Public Works must be obtained before disposal of the documentation can be arranged. This is necessary as queries could be raised at a later date after completion by the Auditor-General or court action could occur or claims could be received from the Contractor. The working documents can explain actions and decisions taken and must be retained by the Consultant/Official.

The following working documents must be regarded as official and must be filed separately and be available for inspection and or investigation:

- (i) Calculations, measurements, etc., used for compiling the Bills of Quantities.
- (ii) Original draft Specification(s) or Bills of Quantities.
- (iii) Measurements for payments and calculations thereof.
- (iv) Site instructions and draft Variation Orders.
- (v) Copies of WIMS5-01 - Contractor - Interim Payments - as submitted.
- (vi) Copies of WIMS5-01 - Contractor - Interim Payment - after payment.

5.34.4 Format Of Final Accounts

The wording to be used for the Final Statement is contained at the end of this document, Specimen 5, titled, "Format of Final Accounts For The Department Of Public Works, Provincial Administration of KwaZulu-Natal".

5.34.5 Number Of Final Accounts Required

The following number of signed final accounts are required:-

- (i) Contractor – 1
- (ii) Department, Procurement and Post-Bid Division (Payment File) – 1
- (iii) Project Consultant – 1

5.34.6 Payment

The procedure to effect payment to the Contractor is as outlined in this document, dealing with Recommendations For Interim Payments. However, either one of the following forms must be completed and is to accompany the Final Payment Certificate:-

- (i) Departmental Quantity Surveyor – Final Payment Certificate Checklist – DOW041
- (ii) Departmental Official – Final Payment Certificate Checklist – Contract Entered Into By Way Of Quotations – DOW041A

5.35 PROCEDURE RELATING TO OBTAINING LEGAL ADVICE AND THE REFERRAL OF CONTRACTUAL MATTERS TO THE STATE ATTORNEY (KWAZULU-NATAL), OTHER LEGAL MATTERS, ETC.

In the event of it being considered necessary to obtain legal advice in respect of a contractual matter or problem, the Directorate: Legal Services, is to be approached in the first instance to give advice on the process to be followed.

For reasons of consistency in approach, adhering to proper lines of communication, avoiding confusion in the Office of the State Attorney (KwaZulu-Natal), etc., the initial approach to the Office of the State Attorney in connection with any matter of a contractual nature shall under no circumstances be made direct to that Office without the Directorate: Legal Services having been first consulted.

The receipt of letters of demand issued by Attorneys, summonses or Court Orders issued by any Court and delivered by a Sheriff, and relating to service or supply contracts, shall,

without delay also be referred to the Directorate: Legal Services who in consultation with the Department's Legal Administrative Officer will decide on the response or action to be taken.