

A review on the effectiveness of the Joint Building Contracts Committee Series 2000 Principal Building Agreement – A contractors' perspective

Peer reviewed

Abstract

With the growth experienced in the building industry, it is increasingly important to have a contract document that can be used on projects that is reasonably acceptable to all parties concerned. The focus of the study was to determine the effectiveness of the *Joint Building Contracts Committee Series 2000 Principal Building Agreement (JBCC 2000 PBA)* (Edition 4.1, March 2005) as used in the building industry. Although edition 5 (2007) was made available after this study was conducted, contractors still have the choice to use either one of them.

Primary data was collected by means of interviews and a structured questionnaire sent to selected contractors in the South African building industry. Secondary data was obtained from the literature reviewed in relevant publications. The main findings were that the *JBCC 2000 PBA* is the most favoured contract document used by contractors in the building industry but that there are still areas of concern with regards to the difficulty in interpreting and implementing numerous clauses of the document, amendments being made to the document without any legal advice and that developing building contractors experience difficulties in general where the *JBCC 2000 PBA* is used as contract document on projects.

The study concluded with recommendations for amendments to the contract document to ensure that the document will be acceptable to all contractors in the building industry and ultimately to be an internationally acceptable document.

Keywords: Contract document, construction guarantee, contractors, disputes, JBCC 2000 PBA, retention

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Abstrak

Met die groei wat in die boubedryf ondervind word, is dit belangrik om 'n kontrakdokument daar te hê wat redelik aanvaarbaar is vir beide betrokke partye. Die doelstelling van die navorsing was om die effektiwiteit van die *Joint Building Contracts Committee Series 2000 Principal Building Agreement (JBCC 2000 PBA)* (Uitgawe 4.1, Maart 2005) soos wat in die boubedryf gebruik word, te bepaal. Alhoewel uitgawe 5 (2007) beskikbaar gemaak is nadat hierdie studie gedoen is, het kontrakteurs nogsteeds die keuse om enige twee van die uitgawes te gebruik.

Primêre data was versamel met behulp van onderhoude en 'n gestruktureerde vraelys gestuur aan geselekteerde kontrakteurs in die Suid-Afrikaanse boubedryf.

Sekondêre data was verkry deur 'n literatuurstudie. Die studie het aangetoon dat die *JBCC 2000 PBA* die mees gewilde kontrakdokument is wat deur kontrakteurs in die boubedryf gebruik word, maar het ook bevestig dat daar areas van kommer is met betrekking tot die interpretasie en implimentering van sommige klausules in die dokument, veranderinge word aan die dokument aangebring sonder enige regsadvies en dat ontwikkelende kontrakteurs dit oor die algemeen moeilik vind op kontrakte waar die *JBCC 2000 PBA* gebruik word.

Ten slotte word aanbevelings gemaak ten opsigte van wysigings tot die kontrakdokument wat sal verseker dat die dokument aanvaarbaar sal wees vir alle kontrakteurs in die boubedryf asook internasionaal as 'n aanvaarbare dokument erken sal word.

Sleutelwoorde: Dispuut, JBCC 2000 PBA, konstruksie-waARBorg, kontrakdokument, kontrakteur, refensie

1. Introduction

In recent years the conditions of the contract agreement have played an important role in the building industry. This is inevitably so because projects have become bigger and projects of greater magnitude tended to create problems that could hardly be solved without a keen appreciation of the meaning and intention of the conditions of the contract agreement.

According to Fouchè (1999: 35) in Roman law an *obligatio* (obligation) is defined as a *legal bond whereby a person is obliged to deliver some or other thing*. It is clear that an *obligatio* must be between two or more persons or bodies which represent the employer and the contractor in the building industry. The *obligatio* creates a right in favour of the creditor, namely the right to claim the due performance from the debtor. In most contracts the parties are simultaneously creditors and debtors. From this it is clear that the *obligatio* creates a personal relationship between the two parties which is crucial for any building contract from the initial stage of the contract as per Fouché. Both employer and contractor must know their obligations towards each other and be absolutely sure what is expected from each of them in terms of the contract agreement.

According to Hughes & Barber (1992: 43), the contract agreement is an integral part of any construction project. The contents and mechanism of the agreement together with the relevant sundry documents must be well known to the two parties concerned as well as to the consultants appointed to perform the professional services on the project. Any misunderstanding or wrong interpretation of the agreement may lead to a dispute or even the cancellation of the contract, which will involve costs.

Malherbe & Lipshitz (1979: 72) state that the following principles are essential for the creation of a contract:

- There must be agreement between the contracting parties to create a legal and binding contractual relationship embracing rights, responsibilities, prerogatives and privileges; and
- The parties must be at one as to the consequences contemplated by such agreement or, in other words, as to their intention in the application of agreed contractual relations.

The tendering process creates an adversarial relationship between the employer and the contractor. The contractor must survive financially on the prices in his tender. A tight economy aggravates this relationship. This is further worsened where sub-contractors are also tendering on the same contract. Everyone must make money on each contract to survive. Onerous and wrongful conditions of contract have the effect of disadvantaging contractors, which will sour the relationship even more. Samuels (1996) mentioned that many parties, the employer, contractor, architect, quantity surveyor, engineers and project manager are involved in the construction process. This makes the contracting process an involved and often complex process.

Loots (1995: 13) define a contract as *an agreement that is intended to be enforceable by law*. He also mentions that a wrong decision concerning the choice of process, materials, anticipated rock, soil, or weather conditions cannot always be avoided, but a person with sufficient knowledge of the law of contract can almost always avoid a wrong contractual decision. Galbraith & Stockdale (1993: 76) mention that it has become customary in English law to regard an agreement to consist of an offer and acceptance.

It is therefore important to have a contract document that is manageable and workable and where all parties concerned under-

stand the contract document to eliminate or minimise the possibility of any disputes on the contract.

2. The JBCC 2000 Principal Building Agreement

2.1 General overview

According to Binnington (1992), the standard form of agreement applied to building contracts in South Africa has been the *Agreement and Schedule of Conditions of Building Contract* and has been used for some sixty years by both the public and private sector within the building industry. Initially *the Agreement* was approved and recommended by the Institute of South African Architects, the Association of South African Quantity Surveyors, the Building Industries Federation (South Africa) (BIFSA) and the South African Property Owners' Association (SAPOA). This so called *Standard Building Contract Agreement* or 'white form' was widely accepted in the industry. It was even adopted by various government departments or para-statal organisations, with various amendments, to suit their own requirements.

A totally new contract agreement was necessary that could be used uniformly within the building industry (Finsen, 1991: v). In 1984, a committee was appointed for the purpose of redrafting a total new set of Agreements. This committee was known as the Joint Building Contracts Committee (JBCC) which consisted of representatives from the Institute of South African Architects, the Association of South African Quantity Surveyors, the Building Industries Federation of South Africa, the South African Association of Consulting Engineers, the South African Property Owners' Association and the Specialist Engineering Contractors Committee. There were no representatives from any of the governmental bodies who, in turn, used their own versions of the old 'white form' of Agreement or in some cases their own forms of Agreement.

According to Finsen (1999: 56), the first entirely new *JBCC Principal Building Agreement* and associated documents were published during 1991. Although *the Agreement* was still in an infant stage, the possibility existed that a revised Agreement with some changes and amendments would see the light to suit the requirements of the building industry. While most part of the substance of the original contract had been embodied in the new contract agreement, a number of substantial changes with the intention of improvement, had been included which should have enabled the document to

be used in a practical and effective way without the necessity for a host of special conditions.

At the same time a new *Nominated/Selected Subcontract Agreement* was issued which, like its predecessors, was intended to be issued in conjunction with the new Principal Agreement. These documents were all intended to be read the one with the other, since knowledge of the Principal Agreement is an essential part of the operation of the Subcontract Agreement according to Finsen (1999).

After several years of intensive re-examination and re-drafting of the 1991 Agreement, the new *JBCC Series 2000* was published in 1998 to replace the 1991 version. During April 2003 a third revised edition was published. The fourth edition saw the light during March 2004 in which the State's provisions were included to meet the needs of the National Department of Public Works. Adjudication was included and is now the default method of dispute resolution. A revised fourth edition which is suitable for the Public and the Private sector was published during March 2005 according to Finsen (2005: iv).

This *Agreement* is thus a contract document specifically tailored to South African construction law and circumstances of the building industry. It sets out the full details of the obligations and rights of employers, contractors and sub-contractors. The duties of the professionals in administering the contract are also explicitly defined.

Finsen (2005) also mentioned that it was the intention of the JBCC to draft a series of documents that would meet the needs of all facets of the building industry and that there would be little or no need for amendments or the publication of new editions.

It has been noted by participants of this survey that revised editions have been coming out at a dramatically increased frequency. Finsen (2005) mentioned that with the changing circumstances in the building industry, the JBCC had published four editions within seven years. These frequent changes to the document could have some negative effects in the building industry, mainly where the contractors have to familiarise themselves with the latest revisions to the contract document.

According to Bold (2007: e-mail), sales of the *JBCC 2000 PBA* for 2006 and 2007 were 6901 and 7452 respectively which denotes a 7.98% year to year increase. The sales of the *JBCC 2000 PBA* over the period 2005 to 2007 account for 47% of the sales since the introduction of the series 2000 in 1998. It is clear from the above that there is a constant demand for the *JBCC 2000 PBA*, on a yearly basis, to be used as contract document.

2.2 Risk analysis: Construction guarantee vs Retention clause

Entering into a contract, both parties concerned are at risk. The employer needs the project to be completed on time and within budget and the contractor on the other hand needs payment for work done. Comparing the risk analysis between the two parties where the retention clause is applicable, the employer is highly at risk most part of the contract period. With the construction guarantee in place, the risk is evenly spread where it is mostly needed during the contract period.

According to clause 3.1 of the *JBCC 2000 PBA*, the employer shall provide a payment guarantee where required by the contractor in the accepted tender. The risk profile is well related where a payment guarantee is in place comparing to the retention clause where a changing risk profile exists.

2.3 The use of the JBCC 2000 PBA in State contracts

The most significant changes to the *JBCC 2000 PBA* have been in respect of State requirements. It had been thought that the 1998 publication would satisfactorily cater for the State's requirements and that the document would be adopted by the State. This was not the case and after lengthy negotiations with various State bodies, it would appear that a document was drafted incorporating specific State requirements.

It was therefore necessary to make provision of substitute clauses in a number of instances. These substitute clauses are contained in clause 41 '*State Clauses*'. All the clauses that are affected by these substituted clauses have been identified with a hash – '#'. This makes the document slightly difficult to read in State contracts where the contractor must take notice of all the clauses identified with '#' and read them in conjunction with the substitute clauses in clause 41. The contractor must also familiarise himself with specific clauses relating to State clauses when completing clause 42 '*Pre-Tender Information*' of the *JBCC 2000 PBA*.

Some of the major effects of the aforementioned clauses effectively withdraw the Principal Agent's authority with regards to payment and completion certificates, extension of time and additional payment, loss and expense and final payment and reserves for the State itself all the aforementioned duties. It constitutes that the employer is judge in his own case. It is also clear that no longer any equitable balance of risk can be said to be incorporated into the *JBCC 2000*

PBA where the State's substitute clauses are incorporated in their present format.

According to Finsen (2005: 48) there is room for many mistakes and it is hoped that the JBCC may be persuaded to prepare separate documents for State use containing the appropriate State provisions.

2.4 Amendments to standard contract agreements

Persons entering into or preparing contracts using the *JBCC 2000 PBA* are warned by the Joint Building Contracts Committee of the dangers inherent in modifying any part of it. If it is considered essential to make changes, users are advised to ensure that such changes are drafted by qualified legal persons with extensive knowledge of the *JBCC 2000 PBA* and the building industry.

Persons who set about copying and/or modifying standard printed forms of contract very rarely do so to the benefit of the contractor. More often the changes made are towards reducing the employer's risk to the prejudice of the contractor's risk which is often substantially increased.

More frequently modifications to the printed contracts are made which result in upsetting the equitable balance of risk inherent in the contract and far too often such changes are drafted by persons, including members of the building industry professions, who are lacking sufficient legal knowledge with disastrous results to either of or even both parties to the contract.

The objective of any contract is to obtain mutual intention, which is fair and reasonable to both parties and which should also apply to amendments according to Hughes & Barber (1992).

Terms are included in a written contract so as to qualify the intention of the parties to the contract. Over the years, a number of rules have developed and been laid down as regards to the process of construing a contract, and in particular for building contracts as mentioned by Hughes & Barber (1992: 114).

According to Hughes & Barber (1992), these rules refer to, *inter alia*:

- the background against which a contract must be interpreted;
- the conduct of the parties;
- the use of general words for a profession;
- the deliberate inclusion and omission of items; and

- the list of items and extrinsic evidence as regards ambiguity.

As most standard forms of contract are not always fully comprehensive in that they may not always represent all the details or the true intention of the parties, these standard contract documents sometimes need to be amended. Supplementary general terms are therefore almost a necessity. This leads to the fact that there are almost always revisions and/or amendments to standard forms of contract in order to meet the specific requirements of the individual projects.

Amendments can be costly to any one of the parties in the event of a dispute arising as a result of ambiguous amendments made to the contract document.

Uff (1991: 147) states that the following considerations should be taken into account when drafting amendments:

- the object of the document must be borne in mind;
- it must be ascertained whether the document is dependent on other documents, and if so, how the amendments will carry through;
- the appropriate form of the document must be selected and the document must achieve the means in the simplest and clearest manner possible;
- the form of drafting must be ascertained as the document may be as a result of negotiating and compromise or as result of legal advice; and
- the formal requirements must be ascertained, this may include evidentiary requirements or statutory requirements.

Collier (1979: 233) states that amendments are often made after the conclusion of the contract. Care must be taken in the drafting as amendments usually involve omissions and additions to the contract wording. It is therefore recommended that all amendments should be in writing and signed by both parties. A legal person should also be consulted to investigate the consequences of such changes.

Amendments do not have to be specifically in favour of the contractor or the employer. This is often a subjective view and such a practice is labelled 'unfair terms', according to Collier (1979). These terms are subject to a 'reasonable test' in court should a dispute arise. There must be a balance as to the risk imposed on the contractor and employer and this will always affect the consequences

of any amendments as one party will under normal circumstances try to pass on the risk to the other party involved.

3. Research method

Research was conducted to determine the effectiveness of the *JBCC 2000 PBA*. The use of a suitable research methodological approach is necessary to achieve the objective of any study. A two-stage approach was used to obtain data for the research. The first stage comprised interviews with ten randomly selected contractors to obtain/determine pre-questionnaire information. The second stage comprised a quantitative research approach by means of a structured questionnaire distributed amongst randomly selected building contractors in South Africa who are registered with their respective MBA's.

A total of 359 contractors were selected to participate in the questionnaire survey; this constitutes 31,2% of the total building industry population. This is acceptable for research of this nature according to Gay & Airasian (cited in Leedy & Ormrod, 2005). Having taken cognisance of the questionnaire design process, it was decided that self administered questionnaires would be the most appropriate survey instrument to use in this study. The questionnaire was divided into 4 sections, namely general information, *JBCC 2000 PBA*, joint ventures and amendments to *JBCC 2000 PBA*. Of the 359 questionnaires posted, 70 were returned which equates to a response rate of 19,5%.

4. Findings

The following findings emanated from the analysis of the completed questionnaire. Percentages indicated in tables and figures below reflects the percentages of respondents, mean = (point total / sample size) and relative index (RI) = Mean - 1 / k - 1.

4.1 JBCC 2000 PBA as a contract document in terms of flexibility and complexity

The majority (69%) of contractors indicated that the *JBCC 2000 PBA* is only a little flexible whereas the minority of contractors indicated that the document is either very flexible (13%) or not flexible at all (18%). The majority of contractors (67%) indicated that the *JBCC 2000 PBA* is only a little complicated while the minority of contractors indicated that the document is very complicated (13%) and 20% indicated that it is not complicated at all.

The Relative Index (RI) indicates that most contractors experience the JBCC 2000 PBA as little flexible (RI = 48%) and somewhat complex (RI = 46%) (Refer to Table 1).

Table 1: JBCC 2000 PBA in terms of flexibility and complexity

	Mean	RI	Not at all (0% - 33%)	A little (33% - 67%)	A lot (67% - 100%)
Flexibility	1.96	0.48	12	46	9
			18%	69%	13%
Complexity	1.92	0.46	13	43	8
			20%	67%	13%

4.2 Difficulties in understanding clauses in the JBCC 2000 PBA

More than half (66%) of the contractors indicated that they sometimes experience difficulties in understanding some of the clauses in the JBCC 2000 PBA whereas the minority indicated that they frequently (16%) or never (18%) experience difficulties in understanding some of the clauses of the JBCC 2000 PBA (Refer to Figure 1).

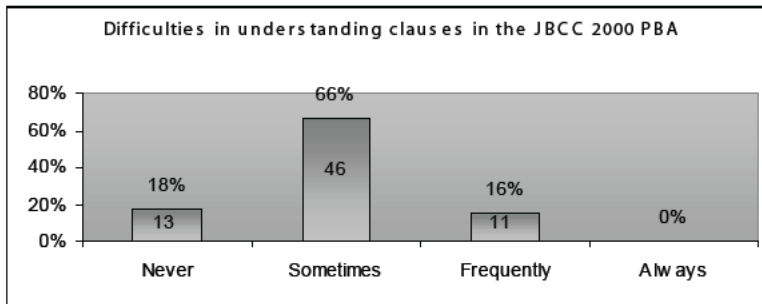


Figure 1: Difficulties in understanding clauses in the JBCC 2000 PBA

It is clear from the above results that where the JBCC 2000 PBA is used as a contract document, most contractors do not understand some of the clauses which could lead to disputes.

4.3 Knowledge of the contents of the JBCC 2000 PBA

Figure 2 reflects that the majority (70%) of contractors do have a moderate level of knowledge of the *JBCC 2000 PBA*. The results also indicate that the minority of contractors either have no knowledge (7%) or an extensive (23%) knowledge of the *JBCC 2000 PBA*.

When entering into an agreement it is vital that both parties (employer and contractor) should have an extensive knowledge of the contract. However, the analysis clearly indicates that this is not the case, with reference to the contractor, which in itself creates a risky situation.

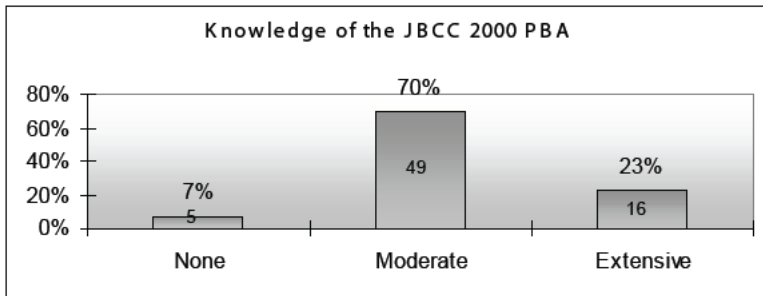


Figure 2: Knowledge of the contents of the *JBCC 2000 PBA*

4.4 Extent of use of the *JBCC 2000 PBA* on projects

The analysis indicates that less than half (30%) of contractors always make use of the *JBCC 2000 PBA* on their projects. Less than half (41%) of the contractors frequently make use of the *JBCC 2000 PBA* while the minority of contractors indicated that they never (9%) or sometimes (20%) make use of the *JBCC 2000 PBA* on their projects (Refer to Table 2). Table 2 also reveals that the majority of contractors frequently (RI = 64%) use the *JBCC 2000 PBA* on their projects. It is clear from the above that the *JBCC 2000 PBA* is not used on all construction projects.

Table 2: Extent of using *JBCC 2000 PBA* on projects

	Mean	RI	Never (0% - 25%)	Sometimes (25% - 50%)	Frequently (50% - 75%)	Always (75% - 100%)
Extent of using <i>JBCC 2000 PBA</i> on projects	2.93	0.64	6	14	29	21
			9%	20%	41%	30%

4.5 Balance of risk

Table 3 indicates that the minority (7%) of contractors indicated that there is never a balance of risk between the employer and contractor where the *JBCC 2000 PBA* is used while 22% indicated that there is always a balance of risk. Less than half of the contractors indicated that there sometimes (38%) or frequently (33%) exists a balance of risk between the employer and contractor.

Most contractors experience that there is frequently (RI = 57%) a balance of risk between themselves and the employer. One possible interpretation could be that the employers amend the *JBCC 2000 PBA* in such a way that most of the risk is shifted onto the contractor.

It is clear from the above results that in the majority of cases, no balance of risk exists between employer and contractor. This in itself is not a desirable situation.

Table 3: Balance of risk between employer and contractor

	Mean	RI	Never (0% - 25%)	Sometimes (25% - 50%)	Frequently (50% - 75%)	Always (75% - 100%)
Balance of risk between employer and contractor			5	26	23	15
	2.70	0.57	7%	38%	33%	22%

4.6 Type of construction guarantee offered according to clause 14 of the JBCC 2000 PBA

Table 4: Type of construction guarantee offered according to clause 14 of the JBCC 2000 PBA

Guarantee offered	Mean	RI	Never (0% - 25%)	Sometimes (25% - 50%)	Frequently (50% - 75%)	Always (75% - 100%)
Variable guarantee	2.61	0.54	15	17	13	21
			23%	26%	19%	32%
Fixed construction guarantee with payment reduction	1.48	0.16	39	9	6	2
			70%	16%	11%	3%
Advance payment guarantee	1.22	0.07	47	6	0	2
			85%	11%	0%	4%

From table 4 it is clear that the majority (77%) of contractors offer the variable construction guarantee (sometimes to always) as security while the minority (23%) never offer the variable construction guarantee as security. It can also be seen from the overall analysis that the majority of contractors frequently (RI = 54%) offer the variable construction guarantee as security.

The majority (70%) of contractors never offer the fixed construction guarantee with payment reduction as security while the remaining 30% of the contractors sometimes to always offer the payment reduction guarantee as a form of security.

With reference to the advance payment guarantee, the majority (85%) of the contractors never offer this as a means of security while the minority (15%) of the contractors only sometimes or always offers the advance payment guarantee as a form of security for their projects.

Table 4 also indicates that most contractors never offer the payment reduction guarantee (RI=16%) or the advance payment guarantee (RI=7%) as construction guarantees.

From above analysis it is clear that the most favoured form of construction guarantee offered by contractors is the variable construction guarantee. It should be noted that the advance payment guarantee is not an alternative to the variable or fixed construction guarantee with payment reduction but merely a form of guarantee

to cover the value of bulk materials or equipment orders for which the contractor, usually the specialist sub-contractor, is not in a position to make the “up front” payment that is usually required before delivery.

4.7 Retention clause as an alternative form of construction guarantee

A noticeable omission from the *JBCC 2000 PBA* is the previously used retention clause. According to Figure 3, more than a third (36%) of contractors indicates that they are not in favour of the inclusion of a retention clause in the *JBCC 2000 PBA* while the minority (7%) are unsure.

However, the analysis clearly indicates that more than half (57%) of contractors indicated that they would prefer to have the retention clause included in the *JBCC 2000 PBA* as an alternative form of construction guarantee.

As the variable construction guarantee is being offered by the majority of contractors and with the payment reduction guarantee and the advance payment guarantee hardly being offered as indicated in Table 4, the inclusion of a retention clause should be considered by the *JBCC*.

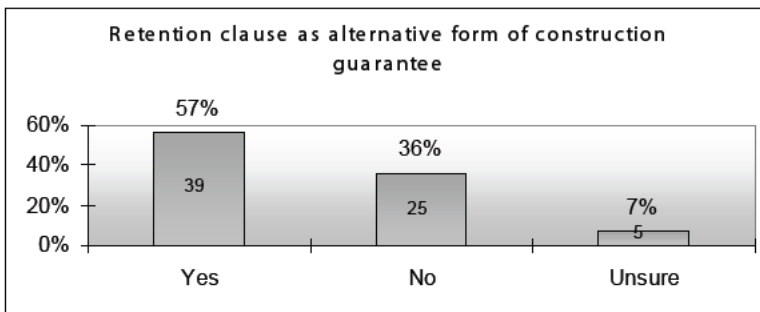


Figure 3: Retention clause as alternative form of construction guarantee

4.8 Amendments to the *JBCC 2000 PBA*

Table 5 illustrates that in the minority (25%) of cases, there was no need to amend any clause in the *JBCC 2000 PBA* while in only 1% of cases clauses were always amended. However, it is clear that in the majority (74%) of cases, clauses in the *JBCC 2000 PBA* were sometimes or frequently amended. The analysis also indicates that

most contractors sometimes (RI=36%) amend clauses of the *JBCC 2000 PBA* in general.

One possible interpretation could be that there still exists a need from either party to the contract, or from or a professional consultant, to amend the *JBCC 2000 PBA* clauses where necessary to meet specific requirements not covered in the *JBCC 2000 PBA*.

Table 5 also shows that when amendments were made, almost two-thirds (65%) of the contractors never obtained legal advice regarding any amendments made to the *JBCC 2000 PBA*. It is also evident from the analysis that most contractors never (RI=15%) seek any legal opinion when amending clauses to the *JBCC 2000 PBA*.

This is a reason for concern as this may result in a number of disputes arising from amendments without legal consultation.

The analysis also indicates that in 53% of cases where amendments were made to the *JBCC 2000 PBA*, these never led to disputes, while 47% of any amendments made, sometimes to frequently did. Since the success of a contract depends on it running smoothly without any disputes, the outcome of this survey is not very encouraging. The analysis also reveals that in most cases where amendments were made to the *JBCC 2000 PBA*, these never (RI=20%) led to disputes.

With reference to mediation and arbitration, the minority of adjustments made to the *JBCC 2000 PBA* led to mediation or arbitration (28% and 30% respectively). Although these results are not that excessive, it is still not desirable.

It is thus evident that when amending clauses to the *JBCC 2000 PBA*, there exists a fairly high possibility that it might end up either in a dispute, mediation or arbitration which could have been prevented if such amendment had not been made.

Table 5: Amendments to clauses of the *JBCC 2000 PBA*

	Mean	RI	Never (0% - 25%)	Sometimes (25% - 50%)	Frequently (50% - 75%)	Always (75% - 100%)
Extent of amendments to clauses	2.07	0.36	17	30	20	1
			25%	44%	30%	1%

Consultation with legal consultant	1.46	0.15	34	14	2	2
			65%	27%	4%	4%
Disputes	1.59	0.20	34	22	8	0
			53%	34%	13%	0%
Mediation	1.31	0.10	43	15	2	0
			72%	25%	3%	0%
Arbitration	1.34	0.11	43	15	3	0
			70%	25%	5%	0%

4.9 JBCC 2000 PBA as an acceptable document

According to Table 6, more than half (56%) of contractors agree or strongly agree to the statement that the *JBCC 2000 PBA* is an acceptable document and with no need for any amendments. The minority (12%) of the contractors disagree or strongly disagree to the statement while the remaining minority (32%) are neutral. The RI (65%) also reveals that most contractors agree with the statement.

The results indicate that the *JBCC 2000 PBA* can be regarded as an acceptable and workable contract document to the majority of contractors and with minor amendments it could be acceptable to all contractors.

Table 6: *JBCC 2000 PBA* as acceptable document with no amendments needed

	Mean	RI	Strongly disagreeStrongly agree				
			1	2	3	4	5
<i>JBCC 2000 PBA</i> as acceptable document with no amendments needed	3.61	0.65	5	3	22	21	17
			7%	5%	32%	31%	25%

5. Conclusion

The research indicated that the *JBCC 2000 PBA* is, to a certain extent, is effectively used in contracts in the building industry. Contractors also indicated that the *JBCC 2000 PBA* is an acceptable document, but with a need for minor amendments. The majority of contractors have a moderate knowledge of the *JBCC 2000 PBA* and experience the document as only little flexible and somewhat complex.

The *JBCC 2000 PBA* is also revised at frequent intervals, which is not preferred by respondents.

'State clauses' in the *JBCC 2000 PBA* can create confusion to some contractors and it is recommended that a separate PBA should be developed for 'State contracts' only.

Although the *JBCC 2000 PBA* makes no provision for a formal retention clause, contractors are providing security based on a retention clause as an alternative form of construction guarantee. The majority of respondents indicated that they would prefer the inclusion of the retention clause as an alternative form of construction guarantee in terms of clause 14.

The main reason for amendments to the contract document was to make the contract more favourable for a particular party. Amendments to the contract document, especially those without any legal advice, are causing problems resulting in arbitration, mediation or litigation, and having a negative effect on the building industry as a whole.

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