

Jbcc minor works vs principal building agreement



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The document was initially intended for historically disadvantaged contractors tendering for state contracts, however some features were found unacceptable and the document was scarcely used. It was however greatly accepted in the private sector, and in 2005 the CB sold an average of 235 Minor Works Agreements per month compared with 445 Principal Building Agreements. (Finesse, 2005) The Principal Building Agreement (ABA) is often thought of as the choice of contract for large projects, this however is not necessarily the case as it is just as suited for smaller projects. This applies to the Minor works agreement (MAW) as well.

Although the title would lead you to believe it is used for small projects it is either an indication of the complexity as well as the size of the project. The professional team of a larger, more complex project is often more equipped to handle and understand the provisions set out in the ABA. The MAW should however not be mistaken as a less efficient document, it is rather an altered version of the ABA, making provision for a less experienced or skilled contractor. Furthermore it can in fact be more efficient than the ABA, depending on the project for which it is intended.

The alterations made to the MAW can be noted in some key differences between the two Agreements. Duration of the Project The MAW is not intended for contracts that would run over a long duration. The contractors involved in the MAW would not have the capacity to operate on a large or complex project that would span over a longer period of time, furthermore they would most likely not be able to manage and schedule a project of such extent. It is because of this that the MAW is recommended for use where the project is anticipated to run for less than months.

CAP The short duration of MAW contracts made it possible to do away with the Contract Price Adjustment Provision (CAP) as the effect of inflation on a short term project household be small enough to disregard. This does expose the contractor to some risk in terms of a sudden increase in prices; however the contractor does also stand the possibility of a gain in terms of a sudden drop in prices. The elimination of the CAP does additionally make it easier for the Contractor to manage the project as he would not have to do price forecasting, as well as accommodating Contractors who might not have the skill to do so.

Bill of Quantities As with the ABA the MAW makes provision for the use of a Bill of Quantities. It is however possible to make use of the MAW without the BOX. It is however quite common practice to not make use of the BOX when using the MAW, and instead including with the tender documents a full set of drawings and the lump-sum document. This is most likely due to the simple project type for which the MAW is used, and that if a BOX is truly required it might be more efficient to use the ABA. It should however be noted that the lack of a BOX does not imply that a quantity surveyor is not needed.

The SQ is still vital in the role of cost advice to both the Employer and the Contractor. Security In the MAW the Contractor can choose between either a Construction Guarantee, or a Retention fund. The Construction Guarantee is similar to the Variable Construction Guarantee in the ABA, it is however slightly smaller, being initially 8% of the Contract Sum, then 4% the day after practical completion, 2% on the day after Final Completion, and 0% on the date of issue of the Final Payment Certificate. The Retention fund is similar to the Fixed Construction Guarantee without the 5% fixed amount.

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Instead 8% is deducted from payment certificate to a limit of 4% of the Contract Sum, the limit decreases to 2% the day after Practical Completion and 0% on issue of the final payment certificate (CLC 3. 9). Contractors operating under the MAW are often not able to provide collateral to financial institutions to provide a Construction Guarantee and thus prefer retention. The contractor will simply cope with reduced payment by paying bills late during the initial phases of the project. Risks & Insurances The MAW takes away a great deal of risk from the contractor.

In the ABA the contractor is at risk for any damages to third parties while he is in possession of the site. Clause 3. 1 of the MAW enables a choice as to who will be liable for claims from rd parties. This enables a greater degree of control as to the extent of each party's liability. The Employer and PA will decide who will be responsible for any claims from 3rd parties, the contractor or the employer. The Public Liability insurance will be taken out by the party stated in clause 3. 1 to insure the interests of both parties to the amount stated in the contract data.

This adjustment of risks allocation not only assists the average contractor who will not be able to cover most damages or claims, but it will also put at ease an Employer who feels that he might be more capable of middling any problems that arise. It is as such not a matter of providing the contractor with a free pass but rather realistically placing the responsibility on the party that is able to bear its burden. The party stated in Clause 3. 1 will be responsible for taking out contract works insurance (CLC. 4.) in the Joint names of the employer and the contractor to the amount and deductible stated in the contract data. Clause 3. 2 states that the Employer is liable for <https://assignbuster.com/jbcc-minor-works-vs-principal-building-agreement/>

the cost of repairing damage to the works including existing buildings and its contents; support to structures being altered and work done by direct subs. The only liability to the Contractor are damages in respect of injuries or death of his employees for which he will have to take out insurance as required by the COCCID (Finesse, 2005), and construction plant and vehicles as stated in Clause 3. And where according to the principal agent any loss or damage is due to the Contractor's negligence, (Clause 3. 6). Where the contractor is held liable in terms of Clause 3. 6 the principal agent will deduct the amount from the next payment certificate (CALL. 9). When the works on site is at risk of Jeopardizing the debility of adjacent structures the employer acknowledges that he is entirely accountable for such risk, as previously stated Clause 3. 2. 2. It is the duty of the party stated in Clause 3. To put into effect the required Lateral Support Insurance. The Principal Agent The responsibilities of the PA are of a greater extent under the MAW and are more clearly defined (Finesse, 2005). Tasks that could be assigned to other agents of the Employer are now restricted to the Principal Agent, leaving only specialized tasks to be taken out by additional agents such as a civil engineer (Finesse, 2005). These susceptibilities contribute to the PA's role in simplifying the contractual relationship for the Contractor.

These responsibilities are similar to those in the ABA and include: Frequent meetings with the Contractor to inspect and facilitate the progress of works, this is done to ensure the on-going quality and fluency of the project as well as aiding the contractor and developing his skills; Recording and distributing all actions taken by parties to the contract Clause 6. 1. 4, this is an extremely time consuming task that assists in monitoring the progress of the

project and is an indication of the probable inability of the contractor to handle the documentation involved with the building contract (Finesse, 2005).

Nominated and Selected Subcontractors The Employer may appoint a Principal Agent and other specialized agents to assist the PA, as well as a direct subcontractor; however no provision is made for Nominated and Selected subcontractors (N). This is due to 4 main reasons. The MAW is intended for simple projects where the use of N would not be required. The contractors working under the MAW might be incapable of co-ordination the various subcontractors. They may not desire the partnership with unknown contractors.

They might not wish for the additional payment responsibility (Finesse, 2005). If the work to be sub-contracted is of such a small extent that the intrusion to the contractor will be limited, it is recommended to consider a direct contractor which would still allow the use of the MAW. Stages of Completion Practical Completion for the MAW is almost identical to that of the ABA. The MAW does not however make provision for Works Completion; it is instead joined in with Final Completion. This means that once Practical Completion has been awarded the

PA will within 7 days give the contractor the final completion list.

Furthermore on the day of Practical Completion, the 90 calendar day defects liability period will start. Clause 10. 1 states that if the contractor does not start the work on the final completion list within a reasonable amount of time the principal agent will give the contractor five working days' notice of

default. The reason for not including the Works Completion Clause is most likely due to the short duration of contracts involved in the MAW, thus the additional time spent would be of little purpose.

The MAW allows a reasonable amount of time for the final completion list instead of 20 days as in the ABA. This is to assist smaller contractors so that they are no longer subject to the deadline, and are able to finish work with a reasonable amount of freedom. The reasonable time allowance however means that the contractor will still have to perform as soon as possible, for if he does not the Principal Agent is still able to take action. What is reasonable will be open for discussion and will differ for various contractors.

Extension of Time The ABA makes a definitive allowance in terms of extension of time in Clause 29. This provision is however not made in the MAW. The MAW does however state in Clause 1 1. 1 that the contractor is entitled to an extension of time if so required and that this will be to the discretion of the Principal Agent. Clause 1 1. 5 of the MAW does however give a set of circumstances in which case the contractor will be allowed an adjustment of contract value, and it would thus be safe to assume that he will also be allowed an extension of time (Finesse, 2005). The MAW Clause 1 1. 1 does however give some indication of a restriction to the claims of the Contractor in terms of an extension of time. Clause 1 1. 1 states that the Contractor will be entitled to an extension of time due to any event beyond the Contractor's reasonable control, this provision for the PA's Judgment is again stated in clause 1 1. 5. 7 which states a cause beyond the contractor's control or reasonable anticipation. These two clauses may not give a precise

yes or no, but does provide some point of discussion, allowing either the contractor or the principal agent to argue the reasonableness of the claim.

Furthermore the MAW does not give any indication of a time limit in which the claim or an extension of time must be made, making an allowance again for the Contractor's limited capacity and ability to manage the project.

Interim Payments The capacity of the typical contractor involved in the projects for which the MAW is intended will most likely not be of such an extent that he is capable of supporting the project on his own budget. It is due to this that unlike the ABA which allows for monthly interim payments, the MAW makes provision for more frequent payments.

These payments can be made fortnightly or even weekly (Finesse, 2005).

This provision is intended to assist contractors without the resources to fund the works, but will also reduce the risk of loss or wastage by contractors not able to manage large amounts of cash or materials at a time. **Recovery of Loss & Damages** In dealing with interim payments the ABA uses two forms, the Recovery statement, which includes the amounts either party can claim back as a result of damages, loss, penalties or insurances, and the Payment Certificate which is a summary stating the Net Payment due.

The MAW does not make use of the Recovery Statement; instead the amounts for damages or loss are included in the Payment certificate. The reasons for which either party can claim damages are much less in the MAW. The Employer can claim damages in terms of Clause 13. 7. 3, these being the contractor's negligence (Clause 3. 6) or termination of the Employer

(Clause 15), and the Contractor can claim according to Clause 13.8, being due to his own termination or suspension (Clause 16).

The MAW does not make as large a provision for damages and loss as they will most likely not occur as often, and if they do it would be to a much smaller extent. Settlement of Disputes The MAW does not make provision for adjudication. Clause 18.1 of the MAW states that where a dispute arises between the Employer or Principal Agent and the Contractor, such dispute will be referred to arbitration by the party which gave such notice. The MAW does not make use of adjudication because it is conflicting in all regards with the type of project the MAW is used for.

Adjudication is a time consuming process, it can become quite expensive, it is usually only used for a dispute over a complex matter, and it will require a great deal of experience from both parties. It is thus clear that not only does the MAW not make provision for adjudication; it would most likely not be an appropriate form of dispute resolution in the MAW. Conclusion According to ACID registrations about 70% of contractors are classified below level 5. These contractors are small low level companies, the largest of which have a tender value range of up to Remission.

The MAW will typically be used for these contractors. It should however be noted that not all low level contractors make use of an official contract and instead work on a week to week basis, working as they get paid. The MAW does make provision for these contractors, and will enable them to protect themselves and their employer, which could lead to an increase in tender values and eventually a higher grading for the company. The MAW is

structured in such a way to assist common contractors; it is easily understandable and goes to great effort to reduce the risk exposure of the contractor.

Furthermore it makes away with certain provisions that would be used in the ABA as they would be of little use to the Employer or the contractor. There are a lot of provisions as previously stated that hafts the risk from the contractor to the employer, this should however not be seen as putting the employer at a disadvantage, but rather giving the Employer a greater amount of control over the project, and eliminating the risk of frequent disputes that would arise with small contractor in the ABA as they will not be able to comply with some of the requirements assigned to them.

The MAW is a great basis for contracting common projects. Like the ABA it is possible to adjust it and make alternate arrangements. The MAW is in fact far less prescriptive and does try to accommodate he unique needs of the Contractor and Employer. Word Count 2639 Finesse, E. (2005). The Building Contract. Just Law. Plagiarism Declaration 1 . 2. I know that plagiarism is wrong.

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