



The South African Institution of Civil Engineering

**FREQUENTLY ASKED QUESTIONS (FAQ)
ABOUT THE
GENERAL CONDITIONS OF CONTRACT FOR
CONSTRUCTION WORKS, Third Edition, 2015
(GCC 2015) AND ITS GUIDE**

FAQ 2017-06-09

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FREQUENTLY ASKED QUESTIONS ABOUT THE GENERAL CONDITIONS OF CONTRACT, THIRD EDITION 2015 (GCC 2015) AND ITS GUIDE

1. TRANSLATION OF GCC 2015 INTO DIFFERENT LANGUAGES

Q: In what languages is the GCC 2015 available?

Ans: Only English, but an enquiry about an edition in Portuguese for use in Angola has been received.

2. BUILDERS BREAK

Q: Is the Builder's Break statutorily enforceable?

Ans: No. The Builder's Break is a South African tradition, and not enshrined in legislation. However, it is a very strong tradition observed by many other industries outside the civil engineering construction sector. The dates are determined by the Bargaining Council for the Civil Engineering Industry (BCCEI), and the dates are announced only in late September of every year, for that particular year. SAFCEC publishes the dates on their website. Some Employers specify in the Contract Data that the Builder's Holiday (or part thereof) shall not be Special Non-Working Days, and shall be included in the calculation of the Due Completion Date, but that is contrary to tradition.

3. ARITHMETICAL ERRORS IN TENDERS

Q: What is the correct methodology to correct arithmetical errors for a re-measurement contract?

Ans:

1. Introduction

In the July 2015 Standard for Uniformity in Construction Procurement, the Standard Conditions of Tender, Clause F.3.9.2(b) requires that "the line item total shall govern and the rate shall be corrected." for the correction of arithmetical errors in bills of quantities This requirement is based on the correction of bills of quantities for a Fixed Price Contract¹. For a Re-measurement Contract², this requirement for arithmetical error correction in a Bill of Quantities³ would be disastrous. For obvious reasons, the correction of arithmetical errors in a Re-measurement Contract must be in the line item total and not the unit rate tendered⁴.

It follows that for a Re-measurement Contract, all the responsive tenders, and not only the highest ranked tender, must first be corrected before deciding on the lowest tender. Once the lowest tender has been

¹ Please refer to Clause 1.1.1.19 in the General Conditions of Contract for Construction Works – 2015.

² Please refer to Clause 1.1.1.27 of the General Conditions of Contract for Construction Works – 2015.

³ Please refer to Clause 1.1.1.2 of the General Conditions of Contract for Construction Works – 2015.

⁴ Please refer to Clauses 6.7.1 and 6.8.1 of the General Conditions of Contract for Construction Works – 2015.

decided upon, the next step is to ensure that the unit rates tendered are balanced. If there are imbalanced rates, these should be adjusted by the tenderer keeping the Contract Sum⁵ the same.

2. Condition of Tender for Re-measurement Contract

For a Re-measurement Contract, delete Clause F.9 in the Standard Conditions of Tender (Annex F to the Standard for Uniformity in Construction Procurement – July 2015) and replace it with the following:

F.3.9 Arithmetical errors, omissions and discrepancies for a Re-measurement Contract

F.3.9.1 Check responsive tenders for:

- (a) the gross misplacement of the decimal point in any unit rate;
- (b) omissions, discrepancies and imbalanced tendered unit rates made or included in completing the Bill of Quantities, or
- (c) arithmetical errors in:
 - (i) line item totals resulting from the product of the unit rate and the quantity in the Bill of Quantities, or
 - (ii) the summation of the prices.

F3.9.2 The Employer must correct the arithmetical errors in the following manner:

- (a) Where there is a discrepancy between the amounts in words and the amounts in figures, the amount in words shall govern.
- (b) If a Re-measurement Contract's Bill of Quantities applies and there is an error in the line item total resulting from the product of the unit rate and the quantity, the unit rate as quoted shall govern and the line item total shall be corrected.
- (c) Where there is an obvious gross misplacement of the decimal point in the unit rate, the line item total shall govern and the unit rate shall be corrected.
- (d) Where there is an error in the total of the prices either as a result of corrections required by this checking process or in the tenderer's addition of prices, the total of prices will be corrected.

The corrected tender price shall be communicated to the tenderer. The tenderer may withdraw the tender, but may not change the total tendered price. Reject the tender if the tenderer does not accept the corrected total of the prices, if any.

F.3.9.3 Where unit rates are considered to be imbalanced by the Employer, the tenderer shall, to the satisfaction of the Employer:

- (a) justify such unit rates, or
- (b) adjust such unit rates by increasing or decreasing these unit rates and selected other rates while retaining the total tender price derived after applying the above mentioned arithmetical corrections, if any.

⁵ Please refer to Clause 1.1.1.11 of the General Conditions of Contract for Construction Works – 2015.

Declare as non-responsive and reject the tender if the tenderer elects not to justify or adjust imbalanced tendered unit rates to the satisfaction of the Employer.

4. THE CONSTRUCTION PERMIT

Q: Why is there no mention in the GCC or its Guide of the Construction Permit that needs to be issued by the Employer?

Ans: In terms of the Construction Regulations 2014 (CR 2014), the Employer may be obliged to appoint a Professionally-Registered Construction Health and Safety Agent (Pr CHSA) for the project. Where the appointment of a Pr CHSA is required, it is an obligation in terms of the CR 2014 for the Pr CHSA to facilitate, *inter alia*, a construction permit to be issued to the Employer. The construction permit is required before the Contractor can commence work. The application for a construction permit must be accompanied by the Contractor's health and Safety Plan, and the permit application process may cause delays in Commencement of the Work. Where delayed by the application process for the construction permit and where not allowed for in the Contract Data, the Contractor must claim Extension of Time.

5. ORDER BY A CONSTRUCTION HEALTH AND SAFETY AGENT TO STOP WORK ON SITE

Q: Can a Pr CHSA order the Contractor directly to stop any work?

Ans: Yes, especially in life-threatening emergency at a localised area on site. However, for the orderly day-to-day running of the Contract, all statutory documents, arrangements and procedures in terms of the Construction Regulations 2014 (CR 2014) that impact in various ways on the Contract, must be accommodated through effective communication channels and protocols through the Employer's Agent. These details are not specifically contained in the text of the GCC 2015 because they are well-defined in legislation (such as in the statutory Scope of Work of a Pr CHSA). The text and diagrams of the Guide also do not contain these details. However, all relevant CHSA matters to be complied with are taken to be covered in terms of GCC 2015 Clauses 3.2.4 and 4.3.1. It is also generally accepted that in terms of GCC 2015 Clause 4.12.3, all communication between the relevant parties shall pass through the Employer's Agent.

6. EMPLOYER'S AGENT'S CATEGORY OF PROFESSIONAL REGISTRATION

Q: To what detail must the Employer's Agent be identified in the Contract Data at tender stage, and should those details include the Category of Registration of the statutory council where the Employer's Agent holds registration, the registration certificate number(s), the individual's name and Identity or Passport Number, and, where the individual holds multiple registrations of where more than one make him eligible as an Employer's Agent (such as Pr Eng and Pr CM), should only one registration be identified in the Contract Data as the more "appropriate" category of registration in the event of replacing an Employer's Agent with one who holds the same "appropriate" or multiple registrations?

Ans: Circumstances change between writing the Contract Data and the execution of the Contract. It is therefore preferable, as far as possible, to require information in the Contract Data that would be permanent. For example, the Employer's Agent defined in 1.1.1.16 should be the firm's name (which is a legal person) and not the actual natural person that would be acting as Employer's Agent in terms of

3.1.1. It would then be up to the Employer to ensure that the natural person acting as Employer's Agent is a registered professional in a built environment profession that is appropriate to the Scope of Work. Should the Contractor suspect that a non-registered person or an inappropriate professional was acting as Employer's Agent, he may lodge a dissatisfaction claim in terms of 10.2.1. An individual who holds multiple registrations that would each qualify the natural person as an appropriate Employer's Agent, may need specifying in the Contract Data, and only the more appropriate registration in terms of Clause 3.1.1 may be specified. Although the phrase "built environment" remains undefined in the GCC 2015, a guideline to its interpretation may be taken from the definitions given in the *Council for the Built Environment Act 43 of 2000* as follows:

“ **'built environment'** means the field within which the registered persons practise;

'built environment professions' means the professions regulated by the professions' Acts;

'professions' Acts' means the-

- (a) Architectural Profession Act, 2000;
- (b) Project and Construction Management Professions Act, 2000;
- (c) Engineering Profession Act, 2000;
- (d) Landscape Architectural Profession Act, 2000;
- (e) Property Valuers Profession Act, 2000; and
- (f) Quantity Surveying Profession Act, 2000;

'registered person' means a person registered in terms of any of the professions' Acts;

7. DECEASE OF THE CONTRACTOR BEFORE COMPLETION

Q: The contractor has passed away after *Practical Completion* and before *Completion*. The items of work on the *further written list setting out the work to be completed to justify completion* in terms of Clause 5.14.2 are not being executed. The Employer desires forthwith termination of the Contract. The next of kin of the deceased Contractor expressed disinterest in the Contract.

The Employer views these events as repudiation by the Contractor and desires forthwith termination on the grounds of breach of Contract by the Contractor in terms of the following phrase in the Form of Offer and Agreement, as follows: "*Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement*". In terms of Clause 9.2, the Employer takes the failure by the Contractor to execute the works as sufficient grounds for termination of the Contract by the Employer. However, it remains unknown to the Employer's Agent and to the Employer who the party might be who is responsible for managing the contractor's estate, although it is known that the Contractor is deceased. What is the correct procedure for the Employer to follow?

Ans: The law protects those who may inherit problems after death and the law also protects the interests of the deceased. It is therefore not a straightforward matter to resolve what is allowed and what is not allowed. For instance, the executor of the estate becomes the party to any actions arising out of the Contract to which the deceased was a party. The executor can take any action by exercising its discretion, for instance to hand over the Contract for completion to another person. This ruling is not a matter for a built environment professional such as an engineer, and the Employer must consult

legal counsel.

It may also be expected that while the Contract has not been terminated, matters to which the Employer's Agent must respond to in terms of the various clauses of the Contract (and as listed in *Appendix 2 of the Guide to the General Conditions of Contract*, and as shown below) will remain mostly the same throughout these processes until the Contract is terminated or completed.

GUIDE TO THE GENERAL CONDITIONS OF CONTRACT 2015, Appendix 2:

LIST OF ITEMS IN GCC 2015 THAT THE EMPLOYER'S AGENT MUST ATTEND TO

Clause No	Event
1.2.1.2	Notice of change of address
2.4.1	Clarification of ambiguity in or discrepancy between documents
3.3.1	Notice of Employer's Agent's Representative's appointment and termination
3.3.4	Notice of Employer's Agent's Representative acting on Employer's Agent's behalf
3.3.6	Response to Contractor's request for Employer's Agent's Representative's orders or instructions causing dissatisfaction
4.3.1	Request for Contractor's proof of compliance with applicable laws
4.3.2	Request for Contractor's proof of good standing with payments in terms of legislation
4.5.4	Certification of payments due to the Contractor for Contractor paying for notices and fees
4.7.1	Instructions for dealing with fossils, etc. on Site
4.8.2	Instructions for facilities for others
4.9.1	Consent for removal of Construction Equipment from Site
4.10.1	Notice of approval for use of Site for Contractor's employees
4.10.2	Instruction requiring Contractor's employee information
4.11.2	Instruction requiring removal of Contractor's employee from Works
4.11.2	Notice permitting re-employment of Contractor's employee
4.12.2	Notice of approval of Construction Manager
5.3.1	Instruction for commencement of executing the Works
5.6.3	Notice of approval of programme
5.6.4	Instruction for adjustment of programme
5.7.1	Notice of rate of progress causing programme to fall behind
5.7.1	Notice of approval of steps taken to expedite progress
5.7.2	Notice permitting work at night
5.7.3	Request for submission of revised program and cost for acceleration of rate of progress
	Notice of approval of adjustment of Due Completion Date due to acceleration of rate of progress
	Written conditions of agreement for payment of cost of acceleration of rate of progress
5.8.1.1	Conditions and permission for work by Contractor during non-working times
5.9.1	Instructions and drawings on Commencement Date
5.9.2	Instructions and drawings necessary for proper and adequate construction of the Works
5.9.3	Instructions and drawings, in response to Contractor's timeous request for instructions and drawings
5.9.7	Notice of approval of Contractor's designs and details on drawings that provide full details, dimensions and particulars
5.9.7	Consent for departure from Contractor's designs after notice of approval by Employer's Agent
5.11.2	Order for suspension of the Works

Clause No	Event
5.11.3	Proceeding with Works after suspension
5.12.4	Request for acceleration (instead of extension of time) and the cost of such acceleration
5.13.2	Notice of reduction in penalty
5.14.1	List setting out the work to be completed for Practical Completion
5.14.2	Certificate of Practical Completion List setting out the work to be completed for Completion
5.14.4	Certificate of Completion with List setting out work to be completed before expiry of Defects Liability Period
5.16.1	Final Approval Certificate
6.3.1	Variation order
6.3.2.1	Contradiction of Contractor's confirmation of a verbal Variation Order
6.4.1	Completed valuation of a Variation Order
6.4.1.3	Notice of consultation of Employer's Agent with Contractor and Employer on methodology, pro forma and other means for valuation of a Variation Order
6.4.1.4	Instruction for dayworks as a Variation Order for additional or substituted works
6.4.2	Delivery notice of valuation of a Variation Order
6.5.1.3	Notice of determination of costs of plant hire rates for Construction Equipment rates for dayworks
6.5.2	Notice of determination of costs of materials for dayworks
6.5.3	Approval of statement of costs for Workmen, materials and Construction Equipment used for dayworks
6.6.1	Order for executing Provisional Sum work
6.6.3	Order for executing Prime cost work
6.7.2	Valuation of the Works
6.7.3	Instruction for Contractor's measurement of work Notice of requirements for Contractor's measurement of work
6.7.4	Certificate of measurement by Employer's Agent
6.8.4	Notice of consultation between Employer and Contractor on costs due to changes in legislation
6.9.3	Order for steps to be taken for Plant and materials becoming property of Employer
6.10.1	Monthly payment certificate
6.10.4	Delivery notice of monthly payment certificate
6.10.7	Correction of previous payment certificate
6.10.8	Requirement for further information after issue of Certificate of Completion
6.10.9	Final payment certificate
6.11.1	Notice of adjustments to General Items resulting from the total of all Variations exceeding a specified percentage
7.1.1	Order for removal of unsuitable Construction Equipment
7.4.1	Instruction to Contractor for providing samples of materials
7.4.2	Instruction to Contractor for taking and delivering test specimens
7.4.3	Instruction to Contractor for doing tests
7.4.5	Reports on tests
7.5.1	Consent for covering up work
7.5.2	Authorisation by Employer's Agent for Contractor's delivery of Plant to Site
7.5.3	Notice of testing or examining Plant, materials, excavations or other work
7.5.5	Order for uncovering work Order for making one or more openings
7.6.1	Order for making good and retesting of Plant
7.6.2	Instruction for further making good after retest failure

Clause No	Event
	Acceptance of Plant subject to reduction in Contract Price
7.6.3	Order for removal of unsuitable materials
	Order for removal and proper reconstruction of work
7.7.1	Order to search for defects
7.8.1	Order for making good of defects
7.9.1	Notification of urgent remedial work
	Notification of urgent emergency-related work
8.2.2.2	Order for repair of damage due to excepted risks
8.5.1	Instruction to submit a report on an occurrence of damage to property
	Instruction to submit a report on an occurrence of injury to persons
	Instruction to submit a report on an occurrence of loss of human life
9.1.5.1	Certificate of amount payable in respect of General Items upon termination of Contract
9.1.5.3	Certificate of balance amount payable upon termination of Contract in respect of reasonably incurred expenses in anticipation of completion of Contract
9.2.1.3	Certificate of grounds for termination of contract
10.1.3	Record of facts in prescribed pro forma to assess Contractor's claim
10.1.5	Notice of consultation on Contractor's claim
10.1.5	Ruling on Contractor's claim
10.2.3	Notice of consultation on dissatisfaction claim
10.2.3	Ruling on dissatisfaction claim

8. DISCONTINUATION OF TABLE 14 OF P0141 ADDITIONAL TABLES: INDICES USED FOR THE LABOUR COMPONENT OF CALCULATING CPA

Q: What are the implications of the discontinuation of Table 14 of P0141 Additional Tables: indices used for the labour component of calculating CPAP?

Ans: This affects the definition of the labour index "L" in the Contract Data. An abridged note issued by the South African Forum of Civil Engineering Contractors (SAFCEC) to its members on 17 February 2017, is given as follows, with kind permission from SAFCEC.

As per Stats-SA notice, Table 14 of P0141 Additional Tables: indices used for the labour component of calculating CPAP, is discontinued from January 2017.

Table 14 reflects the headline CPI index per region which was used since inception for the labour component of SAICE's CPA equation for use with GCC 2015. The implication for all participants in the civil engineering industry is that an alternative index must be found to enable continued calculation of escalations.

For each province, a headline CPI index is published monthly. Stats-SA confirmed that these indices will continue to be available and published. Hence, in consultation with Stats-SA and with the consensus with the Department of Public Works [other organs of state were invited but did not participate], it has been agreed to use these provincial indices. The indices for each province are found in Tables 3 to 11 of P0141 Additional Tables (please note prior to January 2017 these tables were numbered 5 to 13).

The Guide to the GCC 2015 may need to be updated. In this regard, please replace the last paragraph, just before Section 1.5.2 on page 181 stating: "The Project Management and Construction Division

(PDMC) of SAICE may keep information regarding the inputs required for the Contract Price Adjustment Schedule up to date on the SAICE website" with "SAFCEC may keep information regarding the inputs required for the Contract Price Adjustment Schedule up to date on the SAFCEC website"

Please change the first dotted paragraph of Section 1.5.1.4 on page 179 and adjust the example under Sections 1.6.2 and 1.6.3 on pages 183 to 186 accordingly.

9. NEW FUEL INDEX USED FOR THE FUEL COMPONENT OF CALCULATING CPA

Q: What are the details of the May 2016 changes to the fuel index by Stats SA?

Ans: An advisory note setting out the details of the May 2016 changes to the fuel index by Stats SA, was published by the South African Forum of Civil Engineering Contractors (SAFCEC). Details are available on their website, and is reproduced here with kind permission:

17 May 2016

Stats-SA has with the publication of the March 2016 indices in P0151 revised and updated all of the diesel indices. Their "Clarifying Note" in this regard is included at the end of this advice. The new diesel indices from Jan '08 to Mar '16 are also uploaded in a separate file as described below.

First of all; please ignore and permanently delete the SAFCEC Excel Indices File and Clarifying Note previously uploaded on 3 May 2016. At that stage, it was contemplated that new diesel indices can be converted to the old diesel indices, as well as to the 2008 = 100 basis (as reflected in Old Table A, and the Old and New Tables B. This is not possible as noted below.

The implications of the new diesel indices for CPA calculations are as follows:

- 1) The new indices for diesel are provided from Jan '08 in "New Table A 2012 = 100" as reflected the SAFCEC spreadsheet (16.03 SAFCEC_CPAF_Mar_2016 Revised - DIESEL Change).
- 2) All CPA calculations on the basis of 2012 = 100 basis going beyond Feb '16, will require re-calculation by incorporating these new diesel indices being made available as stated above from Jan '08. Indices can be found in "New Table A".
- 3) Further to Point 1, and continuing with CPA calculations using the old diesel indices will not be possible as no conversation possible from new diesel indices to the old diesel indices; Thus previous "Table A", now referred to as "Old Table A" and is discontinued.

4) A case by case analysis and decision will be required for projects completed (i.e. up to Feb '16) for which the final accounts are not yet finalised / submitted / agreed as to whether it would be permissible for re-calculating CPA using the new diesel indices.

5) Special consideration should be given where CPA is calculated on 2008 = 100 basis for which indices were previously provided in "Table B", as this table is also now discontinued. In this regard, it is advised to contemplate, and parties will need to agree, to rather shift to and re-calculate all CPA on the basis of 2012 = 100 basis. This option applicable where projects are ongoing beyond Feb '16, and having base dates prior to Jan '12.

6) The conversion of new diesel indices being 2012 = 100 basis, to 2008 = 100 basis, not possible as per advice received from Stats-SA. Please note that Stats-SA provided the new diesel indices from Jan '08 onwards. The excel file (16.03 New Diesel Indices Jan 08 to Mar 16) containing the new diesel indices can be found in the upload section under Mar '16.

For further clarification and assistance please contact Frikkie Oosthuizen per email frikkie@safcec.org.za or telephone 011 409 0900.

Stats-SA Note on Diesel in the Statistical Release P0151

Stats SA has an ongoing programme of updating and improving the quality of its data for the suite of indices falling under the category of Production Price Indices (PPI). From time to time, these improvements may result in changes to indices that are not a direct result of price changes.

The index of diesel that are used in the Contract Price Adjustment Provisions (CPAP: P0151) for selected materials (Table 4). These tables are not currently published but are available to users on request.

Due to improved methodology and a clean-up process the following indices will be discontinued from Table 4:

- Diesel at wholesale level: Witwatersrand
- Diesel at wholesale level: Coastal
- Diesel fuel: Coast and Witwatersrand
- Diesel fuel: Retail Metropolitan and other urban areas
- Diesel fuel: Retail Metropolitan areas

A new improved series will be published in future (March 2016 publication) and will be backdated to January 2013. Indices will be available for:

- Diesel fuel wholesale - Total
- Diesel fuel wholesale - Coastal
- Diesel fuel wholesale - Inland

- Diesel fuel retail - Total
- Diesel fuel retail - Coastal
- Diesel fuel retail - Inland

A linked series will be available on request for the following:

- Diesel at wholesale level: Witwatersrand linked to Diesel fuel wholesale - Inland
- Diesel at wholesale level: Coastal linked to Diesel fuel wholesale - Coastal
- Diesel fuel: Coast and Witwatersrand linked to Diesel fuel wholesale - Total
- Diesel fuel: Retail Metropolitan and other urban areas linked to Diesel fuel retail - Total
- Diesel fuel: Retail Metropolitan areas linked to linked to Diesel fuel retail - Total

End of Note.

10. DOUBLE-BARREL PUBLIC HOLIDAYS

Q: What are the contractual implications of Tuesday 27 December 2016 being declared a Public Holiday because Christmas Day (25 Dec) fell on a Sunday, and Family Day (26 Dec) already fell on a Monday?

Ans:

1. Introduction

1.1 In 2016 Christmas Day (25 December) is on a Sunday and the Day of Goodwill (26 December) is on the Monday. The implication of this is that instead of receiving two public holidays, employees would only be entitled to one public holiday. This is because Section 2(1) of the Public Holidays Act, 1994, states that whenever any public holiday falls on a Sunday, the following Monday would be a public holiday, which results in Monday 26 December 2016 being both a public holiday and the Day of Goodwill.

1.2 When the same situation presented itself in 2011 the Federation of Unions in South Africa (FEDUSA) called on government to declare a holiday, as Christmas fell on a Sunday. Subsequently the President proclaimed, very late, on 20 December 2011, that 27 December 2011 would be a public holiday. This time, the proclamation was earlier, on 19 September 2016, allowing the construction industry to take the necessary actions in good time.

1.3 The problem with this proclaimed holiday is that 27 December 2016 falls within the construction industry's year-end break. This complicates matters as it is a new public holiday within the holiday period.

2. Legal requirements for leave

2.1 Section 23(1) of the Constitution gives everyone the right to fair labour practices. To this end the Basic Conditions of Employment Act, 1997, establishes conditions of employment. In section 20(8) of this act, it is a requirement that an employee must get an additional day of paid leave if a public holiday falls on a day during an employee's annual leave. Section 20(11) of the act rules that an employer may not pay an employee instead of granting paid leave. In this regard, section 2(2) of the Public Holidays Act, 1994 states that any public holiday is exchangeable for any other day which is fixed by agreement or agreed to between an employer and employee.

2.2 In Section 51 of the Basic Conditions of Employment Act, 1997, provision is made for the Minister to establish basic conditions of employment for a specific sector. Such a sectoral determination was made for the civil engineering sector. Dealing with public holidays, section 16(2) of this sectoral determination states that an employer may not require an employee to work on a public holiday and section 16(3)(a) requires payment of the ordinary wage for an employee who does not work on a public holiday.

2.3 Dealing with annual leave, section 17(3) of the sectoral determination requires that an employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave. Section 17(10) allows an employer to close his establishment once a year for 14 consecutive days, plus an additional day for each public holiday which falls in such a period in which the establishment is closed.

3. General Conditions of Contract requirements for legislation changes

3.1 The basis of risk appropriation in the General Conditions of Contract (GCC) is not to place high risks on the Contractor which he cannot assess beforehand. This could lead to large risk allowances in his rates and prices. In terms of GCC the Employer should rather be required to pay for such risks if and when they occur.

3.2 An unforeseen change in legislation causing additional cost to the Contractor is such a risk. It is covered by Clause 6.8.4 in both GCC 2010 and GCC 2015. The requirements of these clauses, which are the same, are the following:

3.2.1 If legislation is proclaimed shortly before close of tender (within 28 days) or thereafter, the Contractor would not be able to provide for the effect of the legislation in his rates and prices. In this particular instance, any tender closing after 18 October 2016 would be excluded. Furthermore, to be effective, execution of the contract must start before the proclaimed public holiday on 27 December 2016.

3.2.2 The legislation must be an act, ordinance, regulation or by-law of the government. In this particular instance the proclamation by the President of 27 December 2016 as a public holiday, which is a change of the Public Holidays Act, 1994, complies with this requirement.

3.2.3 Such legislation must cause additional (or reduced) cost, arising from the Contractor's execution of the Contract. In this particular instance, the additional cost will be caused by the compulsory one day additional leave for 27 December 2016, being proclaimed a public holiday, within the construction industry's annual year-end leave period. It is therefore an unforeseen public holiday. Because payment, instead of granting paid leave, is not allowed, it means that the Contractor will have to stop work for an additional day.

3.3 The process of settlement of such additional (or reduced) cost is covered by Clause 6.8.4 in GCC 2010 and GCC 2015 and are as follows:

3.3.1 Due consultation for the proper demand and consideration for compensation for the additional (or reduced) cost must take place between the Employer and the Contractor. It

would be advisable for the Employer's Agent to be present at this consultation because the discussions will enable him to act as a quasi-arbitrator to make an impartial, fair and independent determination. In this particular instance the Contractor will have to quantify his demand for his various costs related to his employee's one day leave, standing Construction Equipment for that particular day and extension of time with its concomitant payment for General Items .

3.3.2 After the due consultation between the parties, the Employer's Agent must determine the additional (or reduced) cost and settle it in a payment certificate . The Contractor must be notified by the Employer's Agent of his determination with a copy to the Employer.

3.4 Should either the Contractor or the Employer disagree with the Employer's Agent's determination, a dissatisfaction claim in terms of Clause 10.2 can be submitted.

4. Conclusion

Contracts of which the tender closed or will be closing before 18 October 2016 and commenced before the date of the proclaimed public holiday (27 December 2016) are entitled, in terms of GCC 2015 Clause 6.8.4, to compensation for additional costs and time as a result of this proclaimed public holiday.

11. WHEN SPECIAL NON-WORKING DAYS NEED TO BE INCLUDED IN A TIME CALCULATION

Q: Using the normal recommended wordings as defaults for the Contract Data, the Special Non-Working days are normally excluded from time calculations. Under what circumstances are Special Non-Working Days to be included in a time calculation?

Ans: There are only two sets of circumstances where Special Non-Working Days are to be included as defaults in a time calculation, and one set of circumstances that merits a highly recommended amendment to the General Conditions:

- default time calculations where Special Non-Working Days are to be included:
 - when an Extension of Time applies (Clause 5.12.3), the Special Non-Working Days are to be included:
 - in the calculation of payment of time-related General Items, and
 - in the recalculation of the Due Completion Date;
 - when Penalties apply (Clause 5.13.1), the Special Non-Working Days are included in the calculation of payment of penalties; and
- highly recommended amendment to Clause 6.10.4 where Special Non-Working Days are to be included:
 - when payment is due to the Contractor (Clause 6.10.4, penultimate sentence), which is recommended as a corrigendum or which is recommended to be changed in the Contract Data to be interpreted as

“The Employer shall pay the amount due to the Contractor within 28 days, which days shall include any Special Non-Working Days, of receipt of the Payment Certificate signed by the Employer's Agent.”

These circumstances are governed by the first part of Clause 5.1.1: "*Except where otherwise provided in the Contract...*". Changing Clause 5.1.1 itself is not recommended.