

Afesis-corplan

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**INTRODUCTION TO CONTRACTING FOR  
HOUSING CO-OPERATIVES**

**Book 1 of 2**

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# INTRODUCTION TO CONTRACTING FOR HOUSING CO-OPERATIVES

## 1. INTRODUCTION

### Background

Afesis-corplan has been involved in various housing projects using the People's Housing Process structure whereby the beneficiaries organise themselves to decide how to construct their own houses. One of the methods used in previous projects has been a housing co-operative model whereby people come together and form a co-operative in order to develop their own houses. Within this system it became apparent that leaders of this housing co-operative would need to know something of the workings of the development process.

### Purpose of this Document

The purpose of this document is to expose the leaders of the Housing Cooperative (HC) to important aspects of construction contracting and to outline the processes, legal requirements and mechanisms implemented in carrying out contracts. This document is aimed at a person with matric, in the leadership of an HC or who already has experience and knowledge of housing cooperatives. It serves as a background document for people who will be involved in managing any contracting process. The document is not a training document but can be used as background material for training it can also be used by a facilitator and trainer who supports housing cooperatives.

### Introduction to Contracting

The essence of a contract between two or more parties is that it lays down the wishes of one party (normally the client or employer) and also describes how the other party (the contractor) will fulfil those wishes. For example, in building a house the employer or client (which could be the Housing Co-operative) may wish a certain type of house to be constructed. Typically, the contract document would describe where the house is to be built, what the house will look like and when the house should be built. The contractor being the party who will build the house will then add in to the contract document his/her price to do the work as described. This document then becomes a binding agreement between the two parties describing everything about the project including locality, design, timing of construction, cost of construction etc.

In legal terms in order for somebody to enter a contract one must be at least the age of consent (18 years) and must be of sound mind or must be a legally recognised entity. A legally recognised entity could be:

- a company registered with the registrar of companies
- an individual person in his own capacity as a private individual ; or
- a Housing Co-operative which has been formed via a recognised constitution (called a statute in a cooperative) and that has legal rules for the composition of the Co-operative.

A body could delegate power to someone else (perhaps a project manager) in order to handle other contracts on their behalf. Obviously the handing over of this power is also outlined and agreed in some form of contract. The HC would contract a project

manager by appointing him in terms of a letter of appointment. The items to be included in a typical letter are shown in more detail in Annexure L (Book 2).

Contracts can be formed in various ways. They can be verbal contracts and they can also be written contracts. A written contract is far clearer to follow as the terms of the contract are agreed in black and white. It is recommended that any contract made in business should be a written contract.

The Housing Co-operative should also consider that the required skills could sometimes be found within their organisations (in-house) as opposed to employing someone from outside (normally a private contractor or consultant). The advantages and disadvantages of whether people are in-house or contracted are shown below:

Type	Advantages	Disadvantages
In-house Staff	<ul style="list-style-type: none"> <li>• no contract is needed</li> <li>• staff are familiar with HC's requirements</li> <li>• indirect costs may be covered within the general employment of the staff member</li> </ul>	<ul style="list-style-type: none"> <li>• skill levels could be lacking</li> <li>• workload could be a problem</li> <li>• any learning curve would take time to work through</li> <li>• full liability placed on the HC</li> </ul>
Contracted from "Outside"	<ul style="list-style-type: none"> <li>• should complete task quicker</li> <li>• appropriately trained therefore no learning curve applies</li> <li>• completion of project ensured</li> <li>• liability rests with contractor</li> </ul>	<ul style="list-style-type: none"> <li>• sometimes appears more expensive</li> <li>• Accurate briefing with HC needed to ensure an appropriate product is built</li> </ul>

When looking at the scenario of work to be done in a Housing Co-operative in developing a housing project there would be several different types of contracts that the Housing Co-operative would have to consider as follows:

1. The Housing Co-operative would have to contract their members who would occupy the houses and form agreements as to how that relationship would be formed and what the Housing Co-operative must do and what the members of the Housing Co-operative must do.
2. The Housing Co-operative and professionals that will help the Housing Co-operative to plan, design and administer construction of the housing project.
3. The Housing Co-operative and the people who are going to actually construct the houses and services (contractors) and also contractors that will eventually maintain the services on an on going basis.

This document will mainly focus on points 2 and 3 of the abovementioned types of contracts involving the Housing Co-operative and the other bodies needed in the production of a housing project. Point 1 above, concerning the relationship between the HC and its members, needs to be dealt with separately

The definition of a "housing project" includes all the components that make up the housing project including:

- purchase, sub division and transfer of the land into the name of the land owner,
- the construction of the services which include the roads, storm water system, water supply and sewerage reticulation; and also
- each individual house within the project.

#### Advantages and Disadvantages of Having a Contract

The advantages of having a contract are briefly as follows:

- Quality of product is defined.
- Quantity of product is defined.
- Timing of supply of product is defined.
- Actions to be taken if one party cannot perform are defined.
- More accurate cost estimating is possible and cost control is possible.
- Successful completion of a project is more guaranteed.

Disadvantages of not having a contract in place are briefly listed below:

- Unknown final cost
- Unknown quality of final product
- Unknown timing of delivery of final product

#### Phases of a Typical Project

A project runs through various phases in its lifetime. The following sections describe briefly the different stages of a typical housing development project. More detail is provided in subsequent sections of the document.

- Feasibility & Conceptual planning

This is the initial phase of a project and involves broad brush ideas with input from various bodies such as architects, town planners, engineers, community members and/or beneficiaries. During this process broad ideas as to what the project might look like are conceptualised, considering various global constraints and parameters, and trying to formulate what the project should consist of. Decisions regarding land availability and bulk services availability should be covered in this phase of planning.

People involved in this process would generally be the beneficiaries and professionals. The professionals could be contracted on a time basis for this process or they could be contracted to work at risk if they are prepared to do this., with the promise that if the project was implemented they would then be contracted. See section 2.4 for further information on this.

Enough information should be given by the end of this stage in order to enable the HC to make a decision as to whether the project should proceed or not. The milestone of this stage therefore is a fundamental decision on the feasibility of the project.

- Fund raising

Once there is agreement that the project can go ahead and there is some understanding of the costs involved in developing the project, the housing cooperative would need to source funding to develop the project. These funds

could come from a number of sources from members savings, from loans to the housing cooperative or members or from government grants. It would be at this stage that funding applications are made to the department of housing for housing subsidies.

- Planning Phase

Primarily a Town Planner would be involved in this stage. He/she would have to be employed on a formal contract (see section 2.4). The Town Planner would produce preliminary site layout plans of the proposed housing development showing the positioning of site boundaries, roadways and any servitudes (that are spaces left open for water pipes, storm water channels, electrical wires, etc.). Preliminary engineering designs for services could also be produced at this stage, giving preliminary cost estimates for the project. Preliminary house plans could also be produced. This may require the services of an Architect if house design became involved. Costing information from all these preliminary plans would feed into a total cost estimate for the project which would give some indication on the global feasibility of the project.

- Land Transfer Phase

In terms of a housing development project, this phase usually begins with initiating the sub division, rezoning and change of ownership of the land to be developed. After identification of the land parcel, the Town Planner would prepare a sub division and rezoning application to be submitted to the Local Authority (LA). This application would contain details of the proposed layout of the development and information of present land ownership of the land to be used. The application would also include information on what the area is presently zoned as and what the future zoning will be. The zoning determines what type of activities are allowed on the land. For example business zoning allows shops to be built and residential zoning allows only houses to be built. Once the layout of the proposed development is approved by the LA it would be given to a Land Surveyor who would then produce a survey diagram of the proposed development. The Land Surveyor would then submit this formal survey plan to the Surveyor General. The Surveyor General then approves this plan. This becomes known as the approved Surveyor's General Plan for the development. The surveyor can then go to the site and peg the approved land parcels. A Conveyancer for the development, which is usually a legal person, submits the Approved Surveyor General's plan to the Deed's Office in order to open a "Township Register" for the development. The Deed's office then registers the individual sites against each owner using this register. In a situation where the housing cooperative owns the land the title deeds will be registered in the name of the housing cooperative. Security of tenure for each member of the housing cooperative is then managed by a use agreement signed by the member and the housing cooperative which allows the member to occupy a particular unit within the housing cooperative for as long as they abide by the rules of the housing cooperative.

- Design Phase

It is important that the global feasibility of the project be established before this phase begins. This phase would include production of a detailed design for the road, water and sewer services to the housing project. An engineer would have to be contracted (or appointed) via a formal appointment (see section 2.4) to design

these services. More detailed cost estimates would be produced in this phase in order to update the cost estimate for the project. The detailed designs would be produced and submitted to the local authority for approval. This submission would also include plans for the proposed houses to be constructed.

- **Tendering Phase**

During this phase prices are sought from people who could build the services and houses for construction of the project. These can be obtained using various methods ranging from Public Open Tender, Invited Tenders or quotes requested from various suppliers for construction of the project.

- **Implementation Phase**

This phase consists of the actual construction of the project starting with the awarding of the contract to build the services and/ or houses to a contractor and the ongoing contract administration of the contract as it progresses. During this process cost monitoring measures would apply and constant reporting on the predicted completion cost of the project would be done. It is important during this stage that variations from the proposed design for the project be handled correctly in order to contain costs and prevent costs running over budget.

- **Operation and Maintenance Phase**

This phase of the project could involve, for example, the housing cooperative contracting the services of an on going contractor (plumber etc) to carry out the ongoing maintenance on the services. If the appropriate skills are found within the co-operative maintenance may be carried out by such a person. The cost of this phase is an on going monthly cost which needs to be budgeted for and allowed for, most likely in the form of regular monthly fees levied that are paid by housing cooperative members.

## **2. PREPARATION AND LAND TRANSFER PHASE**

To help with the preparation phase the HC would probably need to employ the following outside people for the following input into the project:

- Town planner to produce layout plans
- Architect to produce house plans
- Civil engineer to design engineering services
- Land surveyor to survey the land
- Conveyancer to transfer land ownership; and a
- Project manager to coordinate the whole process

### **Function of Each Role-Player**

The following list gives some idea of the typical function of role-players involved in a typical Housing Development Project:

- The Town Planner would initially draw up the layout plan for the residential sites and deal with the subdivision. He/she would also ensure that the Local Authority approves the plan and subdivision and rezones the land to the appropriate land use.



- The Conveyancer, who usually has legal training, is involved in transferring the ownership of the sites and houses to the new land owners. The main tasks include opening of the township register with the Deeds Office and then transferring of each of the properties to the new owners. In housing cooperatives the new owners could be a housing cooperative.
- The Land Surveyor produces a detailed diagramme based on the town planners layout plans showing the exact coordinates of all the properties in the project. The Land Surveyor submits this survey diagramme to the surveyor general for registration of the Surveyor General's Plan.
- The Architect is involved with the conceptual planning and design of the actual housing structures but may not be required on a straightforward simple project.
- The Civil Engineer would be concerned with the design of the services to be installed for the project and could also administer the contract once the civil contractor is on site installing the services.
- The Geological Engineer may be required in order to interpret difficult ground conditions that may have cost implications on construction of roadways and foundations of the houses. It is good practise to have a site investigation done during planning in order to identify any potential ground problems. It is always easier and more cost effective to design for difficult ground conditions up front rather than encountering these after construction has started.
- The Electrical Engineer should be employed on a similar basis to that of the civil engineer in order to undertake the planning, design and construction supervision of the electrical reticulation.
- The Project Manager may be employed to manage and coordinate all aspects of the project. In many low cost housing projects this position is not used as it adds to the cost of the project. Often one of the other professionals takes over some project management or co-ordinating functions.

#### Involvement of the Local Authority

All phases of the project would need to be discussed with the Local Authority in order that they are kept informed during the planning and implementation of the project. Also project approvals need to be obtained from the Local Authority. Also on going service charges would levied by the local authority.

Approvals given by the Local Authority usually consist of the following:

- Town Planning Approval – this is the approval of the site layout of the project and includes all servitudes, sub divisions of land to be done and roadways as well as the individual sites.
- Engineering Services Approval – includes for all the services to be installed to each site like water, sewerage, access roads and the stormwater drainage system.
- Building Plan Approval – includes for the actual building to be constructed on each site. These are approved on an individual basis for each site within the housing project. There would then be an approved building plan for each house which is kept by the Local Authority.

Other agreements which would sometimes need to be agreed with the Local Authority are as follows:

- Services Agreement – This agreement would describe any bulk services that the Local Authority may need to install in order to supply the particular project. It would describe briefly the extent of the service, estimated cost and who would pay for the service to be installed. (See Annexure B (Book 2) for an example of a Service Agreement)
- Land Availability Agreement – If the original land belonged to the Local Authority this agreement would describe the procedure to transfer land ownership from the Local Authority to the Housing Co-operative. It would prescribe timing, cost and any other conditions applicable. (See Annexure C (Book 2) for an example of a Land Availability Agreement)

Local Authorities should be operating in terms of some kind of framework e.g. the Municipal Management Act. This Act would encompass conditions of contracting with the Local Authority and the Local Authority would probably have an established form of contract in which they use in this case. Usually however work discussed and agreed with a LA would follow a specific negotiation depending on the type of work to be done.

Examples of items that would have to be agreed and accessed from the LA are as follows:

- Acquiring land – the HC may have to purchase land which may be owned by the LA (see Land Availability Agreement in Annexure C in Book 2)
- The HC may need bulk civil services provided by the LA to the boundary of the township. This would be agreed in a Municipal Services Agreement (see Annexure B in Book 2 for an example)
- The HC may wish the LA to act as their Support Organisation as required in a People's Housing Process (PHP) Project
- The HC may wish the LA to act as the Accounts Administrator, also as required in a PHP type of project

The most important item to remember when agreeing anything with the LA is that the decisions must be written in some form of agreement. Most municipalities have regular meetings and a minuted item in any of these meetings also serves as a binding agreement depending on the situation.

#### Contracting a Professional Service Provider

A professional service provider is either an architect, engineer, land surveyor, town planner, etc. The common name for this type of contract is known as a Letter of Appointment whereby the Housing Co-operative would appoint the professional to undertake whatever task is required. The appointment letter would describe the normal duties or services to be expected from the professional also giving an outline of how the professional will be paid. A recognised general form of contract for this type of contract is as per the South African Association of Consulting Engineers Form of Agreement. In many instances the professional himself would draft the Letter of Appointment to be approved and signed by the client. (See Annexure D (Book 2) for an example of the SAACE Form of Agreement)

The Letter of Appointment generally consists of the following main sections:

- Project Description – this describes exactly what the project consists of.

- Scope of Work – this section describes what work the HC wants the consultant to perform on the project, e.g. preliminary design, detailed design, tender and contract administration
- Programme – describes when the work should start and when completion of the work is to be achieved
- Fees – describes how much the consultant will be paid and at what stage he/she will be paid.
- Liability – this describes the responsibility the professional has for the work performed by him/her. It also describes any limitations which are set regarding the time span that the professional will remain responsible eg currently a professional remains responsible for his/her design for say a building for the entire life of that building, or until someone alters the building – then the responsibility for that change section would transfer to the new designer. The professional would be held liable for any problems arising from any defects in his design. If however the contractor does not construct the building to the design, the designer cannot be held liable.

The Professional Fee amount can be agreement in terms of the following approaches:

- Fixed Fee – The Professional would calculate a fixed fee amount for the work that is required. The advantage of this type of fee is that the client would know up front the amount of fee to budget for the Professional, this simplifies budgeting. In
- Tariff Fee – The tariff fee is stipulated in terms of the SAACE Form of Agreement and is calculated on a percentage basis of the total project value. Most government projects conform to this model. This fee is fairly well determinate at the beginning of the project but varies as the project value might vary.
- Time Based Fee – This fee is calculated from the amount of time spent by the Professional working on the project. He/she would then claim fees based on hours worked multiplied by his rate per hour. It is difficult to budget accurately using this fee type although the advantage is that the client pays for exactly the amount of work done. If the professional works efficiently and saves time he/she also saves money for the client.

The timing of payment of all of the abovementioned fee types can be negotiated with the professional but generally they are paid on a progress basis. In some cases during up front exploratory type work in the beginning of some projects, a professional may be prepared to work on a basis whereby he/she would be paid only when the project comes to fruition. Therefore if the project is shelved early in its conceptual stage the professional would not expect payment. This is what is known as working at “risk”. However it must be emphasised that only preliminary work in the initial conceptual planning stages of a project would fall into this category.

#### Legal Implications of Statutory Bodies

There are several legal requirements that any housing project would need to conform to. The following is not an exhaustive list but mentions the main bodies that have legal implications on the way a project is developed:

- Department of Housing & Local Government – If the project is developed in terms of the People’s Housing Process model then the department has a framework which contains specific conditions to which the project must conform.

Requirements of the Department of Housing & Local Government include the following items:

- Houses should be at least 45 m<sup>2</sup> in size. The Government subsidy for housing applies for people earning less than R3 500 per month.
  - There must be a “Support Organisation” supporting the community in order to help them organise the Housing Project.
  - There must be an “Accounts Administrator” handling the funding transactions for the project.
  - There must be a “Certifier” to check that the houses are built according to plan, and to instruct the “Account administrator” to make payments.
- 
- Building Codes – Development of townships and housing generally needs comply with the requirements of the “Red Book” (Guidelines for the Provision of Engineering Services and Amenities in Residential Township Development) for townships and the “National Building Regulations” (SABS 0400) for housing. Local Authorities sometimes have their own special requirements for development of townships and housing.

The guidelines included in the “Red Book” include all aspects of township design including such things as sizing of water supply pipes, sizing of sewer reticulation pipes, required geometry of access roads etc. SABS 0400 incorporates all deemed to satisfy requirements and also guidelines for all aspects of building. Both these guideline sets are available from the publishers as reflected in the reference section.

- NHBRC – The National Home Builders Registration Council (NHBRC) was established as a statutory body to try and regulate quality in the housing industry. The NHBRC have a series of quality check procedures which presently apply to bank bonded developments. These need to be followed if the development falls into this category of housing.

Any housing developed requiring financing through the banks needs to be registered with the NHBRC who then have extensive regulations to be satisfied with regard to the building of the house. This process also adds a statutory 1.3% of the total price of the house and land onto the price of the whole package. This fee is paid directly to the NHBRC. The guidelines are available directly from the NHBRC as reflected in the references schedule.

In People’s Housing Process projects where the builders are not registered with the NHBRC the project does not have to contribute to the NHBRC.

- Safety, Health & Environment (SHE Act) – New legislation regarding the Operations, Health & Safety Act now require that the client (Housing Co-operative) must appoint an agent who will be responsible for all SHE aspects during the contract. Sometimes the consulting engineer could facilitate this role but there are also health and safety specialists who also offer a service in health and safety requirements. The contractor must ensure that he/she satisfies the requirements of the OHS Act when carrying out all work.

Examples of SHE aspects are as follows:

- Correct use of machinery tools and equipment.
- Conducting a risk assessment on site.

- Preparation for SHE meetings and audits.
- First Aid
- Action to be taken when accidents or incidents occur.
- Prevention of fire.
- Protective Clothing and equipment.
- Safe use of transport and vehicles.
- Security
- Hygiene
- Electrical installations
- Environmental issues

Generally the procedure is that there should be a SHE specification in the tender document which lays down any requirements that the client has in this respect. The tenderer must submit a preliminary SHE plan with his tender briefly describing how he/she intends satisfying requirements of the SHE Act. On award of the contract the successful contractor must then do a complete risk analysis of the proposed work to be done and compile a detailed SHE Plan which will include every detail of measures taken to address Health, Safety and Environment during the contract. This would include a programme of monitoring by the contractor's designated safety officer on site. He/she would liaise closely with the client's SHE agent during all stages of the contract.

- Labour Act – All labour employed on a project should be employed in terms of the Labour Act including any amendments to the act which are published from time to time. The Labour Act is available on the Government Information Web Site [www.info.gov.za](http://www.info.gov.za).

### **3. SERVICES AND HOUSE IMPLEMENTATION**

The HC would probably need to employ the following people in order to help with the implementation phase:

- Civil Contractor – if installation of the civil services is not to be done by the beneficiary community themselves the HC would need to employ a civil contractor in order to install these services.
- Building Contractor – to help with construction of the houses

Some of the people, like the civil engineer, involved in the preparation and land transfer phase may also be contracted to undertake work in this phase of the project.

#### **Alternative Project Structures**

When considering how the project will be undertaken there are a number of alternate structures that one could consider depending on circumstances within the particular project. The following are some examples of different project structures to be considered:

1. Conventional Contractor: The Housing Co-operative employs a commercial contractor directly to construct the houses
2. Management Contractor: In this model the Housing Co-operative could employ a conventional contractor to manage community contractors on the ground. Depending on the agreement, these community contractors could be identified by the management contractor or the housing cooperative. The management

contractor could also be responsible for arranging the supply and handling of materials, labour payments and supervision.

3. Community Contractors: The Housing Co-operative would employ small community contractors directly to construct the houses. The procurement of materials would then have to be done by the Housing Co-operative or some agent employed by them. An important aspect of this model is that the on site supervisory role must also be supplied in order for the contract to have any chance of success. A community contract manager could be contracted to manage the sub contracts.

Contract Type	Skills to be contracted in by HC	Advantages	Disadvantages
Conventional Contractor:	<ul style="list-style-type: none"> <li>Contract Administration Skills (from a consultant)</li> </ul>	<ul style="list-style-type: none"> <li>known cost</li> <li>project should be completed on time</li> <li>quality of product</li> <li>contract risk is carried by contractor</li> </ul>	<ul style="list-style-type: none"> <li>money paid to contractor leaves community</li> <li>very little transfer of skills to community</li> </ul>
Management Contractor:	<ul style="list-style-type: none"> <li>Contract Administration Skills (from a consultant)</li> </ul>	<ul style="list-style-type: none"> <li>costs are controlled</li> <li>quality of product more likely</li> <li>some money is retained by community</li> <li>some transfer of skills into community</li> <li>contract risk is carried by contractor</li> </ul>	<ul style="list-style-type: none"> <li>could be slightly more expensive than conventional as management contractor has to manage other sub contracts not just his/her own contract.</li> </ul>
Community Contractors:	<p>The HC must employ the complete array of skills required including:</p> <ul style="list-style-type: none"> <li>Contract Administration Skills</li> <li>Contract management &amp; supervision</li> <li>Building skills</li> <li>Material procurement</li> <li>Security</li> <li>Labour management</li> </ul>	<ul style="list-style-type: none"> <li>maximum funds retained in community</li> <li>maximise training</li> </ul>	<ul style="list-style-type: none"> <li>quality needs special attention</li> <li>could be minimal supervision</li> <li>time of completion uncertain</li> <li>maximum contract risk to Housing Co-operative</li> </ul>

### Formalising a Contract

#### Alternative Forms of Contract

There are numerous variations of contract that are encountered in a typical housing development project. In section 2 of this document we dealt with contracting a professional service provider using a formal "letter of appointment" which is one type of contract. Other types of contracting include contracting a building contractor, civil construction contractor or materials supplier.

The following sections explore in more detail the specific sections making up these typical contracts encountered in the building industry.

### Contracting a Construction Contractor

Generally, the contract document used for a construction contractor contains main generic sections as described below. For a building or civil type contract generally the conditions of contract employed is the general conditions of contract as compiled by the South African Institute of Civil Engineers (SAICE). Other forms of contract that exist and which are employed, usually on large contracts, include Fidic (International Federation of Consulting Engineers) or the NEC (New Engineering Contract). These contract types will not be explored in this document.

The important items to deal with in a construction contract under the various sections are as follows:

### Conditions of Tender

This section of the contract describes exactly what steps the tenderer (the person/contractor applying to get the work) must take while submitting his/her tender, what must be included in the tender submission and how the document should be priced.

The important items to look out for under the Conditions of Tender would be:

- the deadlines set or the dates for when the tender document is available,
- date of a site inspection for all the tenders. It is important to state whether the site inspection would be compulsory or not as tenderers not attending a compulsory site inspection could be disqualified in the adjudication process.
- date and place of closing of tender where each tenderer has to submit his/her tender.

A tender could be publicly advertised or contractors could be invited to submit tenders. The client would decide which tenderers to invite to submit tenders prices.

The Conditions of Tender section should also explain any Procurement Policy that will be followed during the identification of the contractor. Annexure N in Book 2 shows the specification for a procurement policy of engaging targeted labour.

### Conditions of Contract

Generally a widely used Conditions of Contract are the General Conditions of Contract as compiled by South African Institute of Civil Engineering. This document deals with the following sections of the contract:

- Definitions as to who the different people are in the contract.
- Duties and responsibilities of each person including client, engineer and contractor.
- Commencement of the contract, commencement date for handing over of the site to the contractor
- ownership of the site once the contractor is on site.
- Completion of the contract.
- Payment to the contractor for progress during the contract.
- Failure of the contractor to finish on time.
- Failure of the employer to pay the contractor.

- Normal maintenance periods after the contractor has completed.
- Dealing with delays in the contract due to items which are beyond the control of the contractor.
- Resolving any disputes on site.
- Responsibility for quality of work.

Any special Conditions of Contract which include variations from the General Conditions of Contract should also be explained and spelt out in a section called Special Conditions of Contract. Generally this would also deal with what happens if there is inclement or bad weather that delays the project. For example, the number of days extension added to the contract is calculated usually using a formula which considers the average number of rain days expected during the contract period compared with actual rainfall measured during the contract period. Annexure O in Book 2 shows the usual formula used for calculation of extension of time due to abnormal rain.

### Specifications

This section of the contract defines exactly and in detail what the quality of the product to be supplied by the contractor will be. The specifications are usually broken down into:

- the specific project specification for any particular project giving the scope of work to be done, for example specifying that the project is situated in Blikkiesfontein and will consist of x metres of sewer pipe, y metres of water reticulation and z metres of access roads and 300 houses to be constructed etc; and
- general specifications, for instance SABS 1200, which describes how each job should be done within the project. These are general specifications which apply to all work undertaken within the project. For instance, the sizes of trench excavations and the method of laying of pipes etc.

The Specifications section of a contract usually consists of the following portions:

- Portion 1 consists of the information directly relevant to the particular contract. In this section all of the information relating to the project would be spelt out including what the scope of the work is. Any special items to be attended to would be described. Particulars about the site and where it is situated etc. Any abnormal sub surface conditions or site investigation which may have been done should also appear in this section. Anything else that is important to this contract and would affect the way the contractor had to work should be explained in this section. This section also spells out what Standard Specifications will be used in this Contract. For building and civils contracts, we generally use SABS Standards and would quote the relevant SABS sections applicable to this Contract.
- Portion 2 deals with any Amendments to Standard Specifications. This section would mention alterations to the Standard SABS Specifications and also refer directly to the relevant clauses in these specifications. See Annexure F (Book 2) for an example of a Alterations to Standard Specification.
- Portion 3 would consist of any particular specifications of which there are no standard specs applicable. These particular specifications would consist of specifications which have been written by the engineer for any particular special



section of the works. See Annexure G (Book 2) for an example of a Particular Specification.

### Schedule of Quantities

This section of the contract actually gives itemised details of the work to be done including the quantity of each item of work to be constructed by the contractor. This is in effect a measurement list of the work to be done. This also needs to be priced by the tenderer in order to arrive at the contract price for the whole job. It is important to note that the contract price is made up of the scheduled quantity multiplied by the rate submitted by the tenderer to come to the total price for the contract. Annexure H (Book 2) shows an example of a typical schedule of quantities.

The summary of the schedule of quantities shows the total costs of each section of the bill and therefore also the total for the whole project. It is usual to add a percentage extra for contingency items. These are unforeseen items that will occur during the duration of the project. The usual percentage to allow for contingencies is 10%.

If the contract extends more than about 9 months in duration it is usual to include an escalation clause in the contract which will allow for the increase in the cost of items as time goes on. The usual way of calculating escalation on contract payments is by the contract price adjustment method (as per GCC) which is shown in detail in Annexure P in Book 2.

Another cost which the contractor must take into account in his pricing of the scheduled items is if he needs to take a loan for his working capital (money needed to initiate work before any contract payments are made) there will be interest added to this capital amount. This will obviously increase the longer the loan is outstanding. It is therefore in the interest of the contractor to repay any loans he has as quickly as possible before showing any profit on the project.

### Appendices

The final section of a contract usually consists of Appendices Forms which are to be completed by the tenderer. These include relevant information applicable to the contract (see example of the appendix sheet in Annexure E in Book 2) Other forms consist of other information required by the engineer for adjudication of the tender including previous experience, proposed sub contractors if any to be used, financial standing of the tenderer, VAT clearance certificate, declaration of Historically Disadvantaged Individuals (HDI) status, any targeted procurement goal calculations if required, declaration of surety to be used, any alternative designs which may be proposed by the tenderer. Annexure K (Book 2) shows examples of typical appendices forms.

A Surety (or Guarantee) is a binding contract between the contractor and a financial concern to supply an amount of funding to the client should the contractor default on the contract in any way. The amount of funding is usually set at 10% of the contract value. A pro-forma Deed of Suretyship appears in Annexure K in Book 2.

The following provide three different examples of how a contract could be managed.

#### **Example 1: Contracting a Conventional Contractor**

The civil engineer employed by the Housing Cooperative produces the necessary tender documentation.

The Housing Co-operative decides to contract a conventional contractor to install the civil services for a 200 house residential development. The services consist of sewerage pipes and manholes, water supply pipes, tarred roads and storm water pipes. The Housing Co-operative goes out on general public open tender in order to get a wide range of quotes/ prices from different contractors.

The conditions of tender explains where the documents will be available, when the site inspection will be held, when the tenders must be priced and submitted back to the engineering consultant employed by the Housing Co-operative. The Housing Co-operative also wishes to target local labour as a preferential procurement policy. All information relating to the preferential targeting also appears in the conditions of tender.

The normal General Conditions of Contract as compiled by SAICE are used. These conditions regulate the way the contractor must carry out the contract including all aspects such as when the contract period starts and finishes, commencement of the contract, completion of the contract, payment to the contractor for progress made, responsibility of quality of work by the contractor, items constituting delays in the contract period, resolving any disputes, definition of the maintenance periods to be put in place after initial completion of the work. Also how delays for inclement weather will be calculated.

The Bill of Quantities includes items that cover the total job including any preliminary and general items needed by the contractor to establish him/herself on site and also employ his/her own supervisory staff. The rates for the individual work items such as excavation of trenches or construction of manholes includes all costs including labour, materials, plant, profit and overhead costs. This is because the contractor will do all the work required and be responsible for doing that work.

### **Example 2: Contracting a Management Contractor**

The Housing Co-operative decides to employ a management contractor to oversee the installation of services to the same 200 house township as described above.

The engineer employed by the Housing Cooperative prepares all the necessary tender documentation. The contract goes out to public open tender and the conditions of tender, conditions of contract, specifications would be very similar to the above example.

However, in the itemised Bill of Quantities there would be different items which would include items for the management contractor procuring and storing materials and issuing them to each individual labour contractor. There would be rates for his supervision and management of the labour and also item rates for him procuring each material item required. The management contractor will not actually install the final product but manages labour contractors who will do the actual installation. The labour contractors would probably come from a pool of contractors identified within the community.

### **Example 3: Employing Community Contractors**

The Housing Cooperative decides to use community contractors to build houses within the housing cooperative project.

The tender documentation, prepared by the engineering consultant, does not go out to public open tender as the housing cooperative has identified a pool of local labour contractors. The contract documentation is therefore aimed at contracting each individual's time to supply labour in order to do the job. The Housing Co-operative arranges separate contracts with material suppliers to supply labour to the labour only community contractors.

The specification of the work to be done is similar to the previous examples. Conditions of Contract would partially apply where appropriate to the labour contractor. The schedule of quantities would not contain many preliminary and general items as establishment, storage, supervision etc. as this is not a function of the labour contractors work. The itemised bill items would also be items to supply labour only with materials being supplied separately by the Housing Co-operative.

Any appendices forms on this contract would be fairly limited due to the fact that the labour contractors would probably not have bank accounts or any financial capacity or history. Also they would not be registered as VAT vendors. Appendix M (Book 2) shows an example of a "labour only" contract document.

#### Contracting a materials Supplier

A material supply contract is usually a little simpler than a building contract. The contract consists of similar sections of the contract as described above. Important sections and information to be described in a material supply contract would be the following:

- Exact specifications for the materials to be supplied.
- Delivery of the materials (when and where).
- Mechanisms to come into place on failure of the supplier to supply.

#### **Example of contracting a material supplier**

The Housing Co-operative decides to purchase cement from a material supplier for the construction of houses. The housing cooperative gets a bill of quantities of cement need to build the houses from the civil engineer. The Housing Co-operative approaches the supplier asking for a price per pocket of cement and also indicating what approximate quantity of cement would be required. The material supplier responds by stating the price of this cement. The supplier also indicates how they will deliver the cement to the project. For example, if it is a large quantity of cement that is needed, there would be batches of deliveries on a monthly basis. The material supplier also indicates any price increases that might occur over time. He/she also indicates how many days after issue of his invoice payment should be made.

On a monthly basis the amount of cement delivered is totalled from delivery notes and multiplied by the price, giving the amount payable to the supplier for each month's deliveries. Usually payment is made 30 days after invoicing for the materials.

An important point to remember while negotiating the price is to ascertain whether the price includes delivery of the material to site or whether the materials need to be collected from the supplier's premises.

### Contracting a Training Provider

A contract to employ a training provider is similar to that of contracting a professional service provider but is usually in the form of a letter of acceptance of a quote supplied by the trainer. Important items to cover in a letter of acceptance to a training provider would:

- Detailed content of the training to be undertaken.
- Numbers of recipients for the training.
- Timing and also duration of training.
- Costs of training.
- Any associated costs also to be included with the letter of appointment including higher of venues etc, catering etc.

#### **Example of employing a training provider to train people**

The Housing Co-operative decides to approach a training provider to train some of its members in bricklaying, carpentry and plumbing. The Housing Co-operative asks the training provider to provide them with the details of how the training could be provided. The training provider gives the housing cooperative the following information:

- Cost per candidate trained
- Location of training, whether on site or at the trainer's premises.
- Maximum number that can be trained at any one time.
- Confirmation as to when the training course will be given.
- Details regarding the payment for the training, whether full payment would be made at the end of training or whether a percentage would be required before training is completed with the remainder being paid on completion of training.
- If the candidate needs to travel to stay at the facility, whether accommodation and food is catered for.
- Confirmation of any certification which might be appropriate that the candidate would receive on completion of training.

### Less formal contract arrangement for Peoples Housing Process

All of the examples of contracting described above describe a formal form of contract which is presently in practise. The Peoples Housing Process (PHP), however, has introduced a few new concepts into the process of procuring services and contractors to construct services and houses.

One of the motivations of introducing the PHP is to reduce the number of highly skilled (and therefore "expensive") professionals required for the process of developing housing and to place more decision making power into the hands of the

beneficiary community. The following measures have been established in order to handle some of the functions traditionally performed by a consultant or conventional contractor.

#### Support Organisation

The function of this organisation is to support the community or Housing Co-operative in administration with management capacity in order to carry out the Housing Development process. The support organisation undertakes most of the management and administration functions. The Support Organisation could be an organisation like a Local Authority, a Non Governmental Organisation (NGO), or a private engineering consultancy firm.

#### Accounts Administrator

The Account administrator administers the finances and is responsible for accounting for all expenditure on the project. The Account Administrator makes sure that government housing subsidies and project funds are used for what they are planned for. All payments go through the accounts administrator. The account administrator only makes payments on receipt of a claim by the certifier.

#### Technical Certifier

The certifier inspects and monitors the quality of work done on site. The certifier instructs the account administrator to make necessary payments to builders or material suppliers when the agreed upon work is completed or the material is delivered. In formal contracts as described in the previous section, the contractor him/herself would have made claims for payment and would have been overseen by the Engineer.

#### Design Engineer

In the PHP an engineering consultant may only fulfil part of the traditional role of the engineer in that he/she may only address the design aspect of the project without taking any further responsibility for other functions like tender procurement and contract administration.

In a PHP project, often the civil services are installed by a conventional contractor under the supervision of an engineer contracted by the housing cooperative, with the houses built by labour contractors sourced from the community and contracted by the housing cooperative. The Housing Co-operative also usually arranges for material to be supplied by suppliers, as needed, to community contractors.

#### Tendering, Adjudication and Award of a Contract

In the traditional building construction scenario, during the tender period, each tenderer pricing the contract completes the Bill of Quantities with his/her price rates for the different items of work to be done. In addition, all other required information in the contract appendices is also supplied. After the closing of the tenders, the consulting engineer will collect all completed tenders and perform an adjudication on the tenders in order to recommend a successful tenderer to be awarded the contract.

There are a number of different methods of asking prospective contracts to price the tender as shown in the table below:

Type of Tender	Advantages	Disadvantages
<p><u>Public Open Tender:</u> This is advertised in the public newspaper for a period of time (usually at least 3 weeks) for tenderers to collect a tender document for completing</p>	<ul style="list-style-type: none"> <li>• Wide choice of contractors</li> <li>• Wide range of prices usually</li> <li>• Inclusive of all prospective contractors – very fair</li> </ul>	<ul style="list-style-type: none"> <li>• Inappropriate contractors pricing</li> <li>• Can be a problem to verify all documentation submitted with the tender</li> <li>• Contractor can be from outside the area – no knowledge of local conditions</li> <li>•</li> </ul>
<p><u>Invited Tender:</u> A few contractors who are known to the professional team to be appropriately equipped to perform the work are invited to submit prices – sometimes used when a specialist job is to be done</p>	<ul style="list-style-type: none"> <li>• Small price deviation usually indicating a true market related price</li> <li>• Only dealing with appropriate contractors</li> <li>• Known to the client</li> </ul>	<ul style="list-style-type: none"> <li>• Possibility of collusion between invited tenderers</li> <li>• Not conducive to emerging contractors</li> </ul>
<p><u>Pre Qualifying Tender:</u> A public request is published inviting tenderers to submit a resume of their particulars showing fitness to perform the work in the contract, after these submissions are received, the successful recipients are then asked to price the tender</p>	<ul style="list-style-type: none"> <li>• Only appropriately qualified tenderers apply</li> <li>• Consistent pricing with market trend</li> <li>• Competitive pricing ensuring value for money</li> </ul>	<ul style="list-style-type: none"> <li>• Exclusive pool of tenderers will exclude unknown talented tenderers</li> <li>• Not conducive to emerging contractors</li> </ul>

As briefly explained above the adjudication of tenders mainly assesses the following items:

- Price of tender
- Targeted procurement points scored
- Tender duration for contract
- Previous experience of tenderer
- Present financial status of tenderer
- Current work commitments of tenderer.
- References for previous work contracted.

The Consulting Engineer writes his/her adjudication report taking into consideration all of the above points and concludes by recommending who he/she thinks the successful contractor should be. The client (Housing Co-operative) then has to approve award of the contract to the successful contractor as recommended by the consulting engineer. The Housing Co-operative has the authority to award the contract to an alternative tenderer, but needs to fully motivate reasons as to why the recommended contractor was not awarded.

In the adjudication process of the tender, depending on what the aims of the client might be, it is not necessarily the cheapest price that is always recommended. For

instance if the client wants to employ somebody who is going to maximise employment of local labour then that aspect would carry more weight than other aspects in the tender. In fact price is not always a good indication of the best tenderer because, if a tenderer did not understand completely what he/she was pricing and came in with a low price this would show that the tenderer is not very competent. It is very important that the contractor to be awarded the job must have the necessary experience, knowledge and capacity to complete the job successfully.

The award of the contract marks the commencement of the contract period for the contractor and the beginning of work on site.

It is important to note that in adjudicating tenders the engineer will not only consider price submitted by the tenderer but also procurement targets, capacity for actually carrying out the contract which would include an assessment of the resources and financial backing of the contractor.

### Contract Administration

Administration of the contract is usually done by the consulting engineer. It involves various activities in running and monitoring the progress of the contract on site and working with the contractor in order to accomplish successful completion of the contract. Generally, the consulting engineer would perform the following functions.

### Construction Monitoring

Construction monitoring is usually involves regular site meetings on site with the contractor. The consultant would monitor progress of work and also measure it against the set programme for the contract and also monitor the quality of work being produced. This information would be recorded and reported to the contractor in the regular site meetings. The consulting engineer must also report regularly to the client (the housing cooperative), on progress of work on site.

### Contract Payments

The consulting engineer would regularly measure up progress of work and produce payment certificates for progress payments to be made by the client to the contractor. Generally payment of contract payments are made on progress throughout the contract period with the final measurement and invoice and payment being done on completion of the work. It is important that this final payment reflects the true value of work done.

Payments are always made on total work done to date less all previous payments made. The example in annexure I (Book 2) shows the general format of the payment certificate. Notice that payment is calculated on the tendered rate for each item multiplied by the measured quantity done of that item.

### Completion of Contract

The consulting engineer would formally sign off completion of the contract once the work has been done satisfactorily and the employer can gain beneficial occupation of the facility constructed. Completion of the contract is recorded on a particular day contractually known as the completion date and this usually marks beginning of a maintenance period during which the contractor would remain responsible to repair any latent or patent defects appearing in the project during the maintenance period.

On completion of the maintenance period the contractor is completely released from the contract therefore taking no further responsibility for the facility. During progress of the contract, retention monies would have been deducted from payments to the contractor (see Annexure I in Book 2 showing a payment certificate). At completion of the contract all these retention monies are released and paid to the contractor. If the contractor did not repair any defects he/she was required to, this retention money would be used for these repairs. Annexure J (Book 2) shows an example of a typical completion certificate.

#### **Example of a Defect**

The contractor fitted timber doors to the houses that were not properly cured. After a short time the doors began to warp and therefore would not close properly, some even fell off their hinges. In this case the contractor would have to remove the damaged doors and replace with new doors at his/her cost. Obviously he/she would have a claim against his supplier if the supplier supplied the faulty doors.

#### **Contract Termination**

There are certain circumstances whereby it is necessary to terminate or cancel the contract between the employer and the contractor. Contractually there are various reasons for contract termination including the following:

- Contractor failed to provide suretyship
- Failure of contractor to perform in construction of the facility
- Failure of employer to pay contractor

In general, this is the reason that sureties are put in place. Should there be failure of the contractor to complete or perform his/her work then the surety can be used in order to employ another contractor to complete the work.

The process for cancelling a contract involves the following:

- The status of the work is measured up and an invoice for work done to date is developed.
- Initially the engineer should rule on any disputes which exist between the employer (the housing cooperative) and the contractor.
- Failing the acceptance of the engineer's ruling on any disputes then the dispute can be taken to mediation whereby an outside independent specialist is employed to hear both sides of the dispute and make a ruling.
- Should the parties not accept the ruling of the mediator, the case would then go to arbitration where the normal legal process would take place.

In general, termination of a contract is a last resort and should be avoided where possible. Cancelling a contract and employing a new contractor on site always involves extra costs for the client and usually an extended contract period as well.

#### **4. OPERATION AND MAINTENANCE**

On completion and handover of the completed houses to each beneficiary a new phase of the project begins, namely operation and the ongoing maintenance of the



services, houses and housing cooperative property. The HC may consider employing the following people to help them with this phase:

- Maintenance Contractor – this person would be experienced in general maintenance of a wide range of items including plumbing, building repairs, electrical repairs, garden maintenance etc
- Bookkeeper – to keep a record of all income and expenditure in the housing cooperative. In particular the bookkeeper makes sure that monthly fees are collected from the members of the housing cooperative so that municipal rates and maintenance costs can be paid.
- Security guards – to provide a security service to make sure the housing cooperative property is not damaged by vandals and people are safe in the housing cooperative.

#### 4.1 Functions to be performed

Generally the functions to be performed by the Housing Co-operative during the on going management phase for the houses would be items such as the following:

- Unblocking of internal sewerage reticulation.
- Repair of any water supply pipes between the water meter and the houses.
- Upkeep and maintenance of the common area
- Unplanned and emergency maintenance
- Planned and regular maintenance and upkeep
- Perhaps addressing security in the co-operative common area.
- Collecting monthly fee for the upkeep of the above.
- Deal with eviction procedures for people that don't pay their fees or break rules of the housing cooperative
- Deal with the process of transferring of units when one person leaves and a new person comes into the housing cooperative

The above functions can be undertaken by people either contracted from outside or from within the housing co-operative. Even if housing cooperative members are used to perform some of these functions there should be a contract with the member explaining exactly what the member will do and how and if they will be paid.

The housing cooperative could also decide to employ the services of a property management company to take responsibility for most/ all on going management functions.

Usually in housing cooperatives each individual house should be the maintenance responsibility of each individual member of the HC. Therefore items such as repairing broken windows or repainting of houses etc. should be done by the individual concerned.

#### 4.2 Forms of Contracting Maintenance Contractors

A slight difference between most the contracts in the on-going management phase (e.g. maintenance or bookkeeping) compared to the contracts we have considered so far in this document is that this work is on-going. Installation and construction work in the housing development phase is finished once it is completed.

There are various options for how the HC can deal with these contracts. Using on going maintenance contracts as an example:

- Contract a maintenance company for a once off single batch of maintenance work. Every time maintenance work is required this would require a new contract.
- Contract a maintenance company on an on-going basis and pay a fixed amount every month independent of the extent of work.
- Contract a maintenance company on an on-going basis and pay him/her depending on what time was spent on maintenance each month.
- Contract a maintenance company on an on-going basis but request and approve quotes for packages of work before each work package starts.

It should be remembered that for long term contracts there needs to be a clear cancellation or termination clause. A common strategy is to have an annual contract which is then renewed each year. Should the contractor not perform then his/her contract will not be renewed and a new contractor could be awarded the new annual contract.

#### **Example of an Annual Maintenance Contract**

The HC wishes to contract a plumber to unblock the sewers on an on going basis. The plumber gives a fixed price per callout. This is an annual contract so this price would remain fixed for the year. At the end of the year the HC renews the contract but the plumber has experienced cost increases. He/she increases his fixed rate per callout slightly. The HC confirm that even his/her increased rate is still a good rate and is lower than other plumbers. The HC therefore renews his/her contract for the second year at his new increased rate.

The following year the plumber's business has grown and he/she is experiencing higher overhead costs in running the business. He/she submits his/her increased rate per callout for the third year. The HC sees that his new rate is now much higher than another smaller plumber who has also submitted a rate for this work. The HC decides to terminate their contract with the first plumber and award the new annual contract for the third year to the new plumber at his/her rate per callout for unblocking the sewers.

#### 4.3 Formulation of Regular Maintenance Plan

Regular maintenance which will be required to the common areas of the co-operative should be documented in a maintenance plan including items such as:

- Checking and maintenance of any common fences.
- Mowing of the common grass areas.
- Routine inspection of sewer manholes of the internal reticulation.

These requirements would formulate the basis of the regular maintenance plan to be put in place.

#### 4.4 Implementation of Maintenance Plan

It is important that the HC allows for a sufficient budget and personnel for ongoing maintenance of the housing development. The budget would need to be sufficient in order to employ suitably qualified personnel to perform the maintenance required.

#### 4.5 Monitoring Maintenance

An important aspect of the maintenance plan would be the regular monitoring process and inspections to be done by maintenance personnel. These inspections would then be regularly reported back to the HC and the correct steps taken in order to remedy any maintenance items required.

#### 4.6 Payment of Maintenance Budget

There are various means of formulating how the maintenance budget is created and sustained. One of these methods generally used is in the form of fixing a levy/fee that is paid on a monthly basis by members of the Housing Co-operative. The amount of fee would be calculated to cater for the amount of planned or expected maintenance, a contingency amount for unplanned and emergency maintenance to be done, and payment of personnel required etc.

## GLOSSARY

## **APPENDIX 1**

### **SUMMARY OF CONTRACTS AT ALL STAGES OF HOUSING PROJECT**

The following is a summary list of all contracts and agreements needed during the course of a typical housing development project for a Housing Co-operative (HC):

#### **1 Planning Stage**

- 1.1 Contracts/ letters of appointment
  - 1.1.1 HC and project manager
  - 1.1.2 HC and planner, land surveyor and conveyancer
  - 1.1.3 HC and engineer, civil and electrical if required
  - 1.1.4 HC and training institutions (training in coops or construction skills)
  - 1.1.5 HC and savings and loan organisation
- 1.2 Agreements
  - 1.2.1 HC and land owner (for purchase of land if it is private land)
  - 1.2.2 HC and municipality
    - 1.2.2.1 Land Availability Agreement (if land is municipal owned)
    - 1.2.2.2 Services Agreement
  - 1.2.3 HC and provincial government - Housing subsidy project agreement (if government subsidy is applicable)

#### **2 Construction Stage**

- 2.1 Contracts
  - 2.1.1 HC and quality certifier
  - 2.1.2 HC and account administrator (could be LA)
  - 2.1.3 Construction Option 1: conventional contractor
    - 2.1.3.1 HC and building contractor
  - 2.1.4 Construction option 2: management contractor
    - 2.1.4.1 HC and management contractor
  - 2.1.5 Construction Option 3: community contractor
    - 2.1.5.1 HC and labour only contractor
    - 2.1.5.2 HC and material supplier
    - 2.1.5.3 HC and security firm
  - 2.1.6 HC and insurance company (if appropriate)
  - 2.1.7 HC and bridging finance company (if appropriate)
- 2.2 Agreements
  - 2.2.1 Completion certificates for Services
  - 2.2.2 Handover Certificate for House

#### **3 On going management**

- 3.1 Contracts
  - 3.1.1 HC and property management service provider
  - 3.1.2 HC and maintenance company (e.g. plumbers/ garden services)
  - 3.1.3 HC and insurance company
  - 3.1.4 HC and savings and loan organisation
  - 3.1.5 HC and bookkeeping organisation
  - 3.1.6 HC and auditing firm

### Contract example

The following contract example provides an imaginary summary of some of the contracts that are needed in a housing development project. The purpose of including them is to give an overall picture of the type of contracts that are needed in developing a housing cooperative project.

#### Example:

*A group of 200 homeless people living in Pakamisa decide they want to come together and set up a housing cooperative to provide housing for themselves. The group learns more about cooperative housing from a local NGO promoting cooperative housing. The group decide that they want to manage the whole housing development process themselves as they feel this will be the best way to ensure that they get houses they like.*

*Pakamisa Housing Cooperative (PHC) is registered with the registrar of cooperatives. The members elect a board of directors from amongst themselves to manage the cooperative. PHC negotiates with Safe Bank for PHC members to save money a good savings interest rate. PHC also negotiates with their local municipality, Kakulu Municipality, to buy some land owned by the municipality next to Pakamisa.*

*Kakulu Municipality has already done a feasibility of this land and has identified that it is suitable for low cost housing. Kakulu Municipality also confirms that the land will be able to accommodate the 200 houses on plots of 300 m<sup>2</sup>. The municipality has already installed bulk services to the boundary of the property.*

*PHC approaches Appropriate Engineering Consultancy to help them prepare a housing application for a 200 unit housing project on the land.*

*After some discussion it is decided by PHC that they will apply for an institutional subsidy to develop a 200 unit housing cooperative on the land. They further decide that they will follow the Peoples Housing Process route with PHC as the support organisation who will make the application to the provincial department of housing. PHC agrees that Kakulu Municipality will be the Account Administrator and Appropriate engineering consultancy will be the Certifier.*

*Appropriate Engineering consultancy prepared, at their own risk, a housing subsidy application to the provincial department of housing. AEC knows that if the application is not approved they will not be paid. If the project is approved they will be paid at a fixed rate from the housing subsidy to prepare preliminary designs, detailed designs, tender contract administration, and certification.*

*The application is approved by the provincial department of Housing. PHC appoints Town planners, land surveyors and conveyancers to plan, survey and transfer land ownership. These appointments are made on a fixed rate per house with consultants being paid from the housing subsidy.*

*PHC negotiates with Easy Training, to provide block making, carpentry, plumbing and pipe laying training to some people from housing cooperative members households. Easy Training arranges funding for this from the department of Labour.*

*PHC decides to employ a management contractor to manage the construction of the internal services and houses. PHC also decides to invite 3 contracting companies that have done similar work to submit tenders.*

*PHC excludes blocks from the material to be sourced by the Management company as they have been able to negotiate a favourable price with a River View Block Manufacturing cooperative, and this cooperative employs some of PHC members.*

*AEC produces tender documentation for the installation of internal services and houses and gives it to the 3 identified management contractor companies. AEC receives completed tenders, produces a tender adjudication report summary and makes a recommendation to PHC to use Integrated Solutions Project Management Company (ISPMC) as they are the second cheapest tender but have experience in other similar work. The lowest tender did not do the calculations correctly which indicates that they did not understand properly what they were asked to do. PHC accepts the recommendation of AEC.*

*ISPMC appoints, a sub contractor to manage the services component of the project as this work is a specialist form of work. The PHC together with ISPMC set up a sub contractor recruitment committee, as was outlined in the tender documentation, to identify appropriate labour only sub contractors to work under ISPMC to construct the houses.*

*AEC monitors that the services and houses are built according to the approved plans, and holds regular meetings with ISPMC and PHC*

*AEC signs stage completion certificates when certain tasks of work like foundations, walls, etc. are complete per house. These certificates are given to the Kakulu Municipality who are the account administrators for the project. Kakulu Municipality pays ISPMC to pay the sub contractors. Kakulu Municipality also pay River View Block making cooperative for blocks when they are delivered.*

*On completion of the houses, AEC and the PHC leadership and each of the PHC members who have been allocated to a unit signs a final completion certificate. The members are then able to move into the house.*

*The people who move into the houses also sign a use agreement with PHC. The use agreement specifies which house the member will be able to live in and states that the member will be responsible for maintaining the personal space he/she is allocated too. The housing cooperative is responsible for maintaining the common space.*

*The PHC develops a maintenance plan and asks 2 maintenance businesses to submit proposals and quotes for how they would assist the PHC to maintain the property. PHC enters into a contract with Quick Plumbers, who submitted the cheaper quote. Quick plumbers are paid a fixed price to be on call by the housing cooperative to deal with maintenance emergencies and to do monthly planned maintenance work. The duration of the contract is for 1 year. After 1 year PHC will re-evaluate the contract and decide if they want to extend the contract or find another maintenance company.*

*PHC also employs one of its members on a part time basis for 5 days a month to maintain the financial books of PHC.*

### **Contract examples for case study**

The following contract examples are based on the above case study example. Only some of the key letters of appointment and contracts are shown in the case study examples.

Example:

1. land sale agreement
2. Letter of appointment of engineering firm
3. Contract between HC and management contractor
4. Letter of appointment for material supplier
5. letter of appointment with maintenance company (for on going phase)

Please note that where these documents refer to annexures, these annexures are not attached.

These are summary examples, so for example where an subsidy agreement with government is usually 30 pages with 50 pages of annexures, in these summary examples we just make a 2 to 3 page summary maybe without any annexures.

These examples should not be seen as real examples to be used in a real project. The authors of this document take no responsibility for the accuracy of these examples.



**Example 1: Land availability agreement**

Agreement between  
Kakulu Municipality  
(the municipality)  
and  
Pakamisa Housing Cooperative  
(the HC)

1. Noting that the HC would like to purchase the land in Pakamisa zone 5 to build 200 low cost houses for its members.
2. The municipality council, as per the council resolution dated 8 December 2004 agrees to sell the land of 80 000 m2 as shown on the attached locality plan to the HC at R0.80 per square meter.
3. The HC agrees to:
  - a. Pay the municipality for the land from the subsidy monies once people move into the houses
  - b. Submit an Institutional housing subsidy application following the PHP to the provincial department of housing
  - c. Enter into a Subsidy agreement with the provincial dept. of housing
  - d. Employ a town planner, land surveyor and conveyancer to plan, survey and transfer the land in consultation with the municipality
  - e. Obtain planning approvals before any work starts on the land
  - f. Obtain building plan approval before any houses are built
  - g. Pay the municipality all rates and service charges once the HC takes occupation of the land
  - h. Allocate houses according to the agreed allocation policy of the HC
4. The municipality agrees to
  - a. Provide bulk services to the boundary of the land by 1 June 2005
  - b. Arrange for necessary deed of sale documentation to be developed and facilitate signature of these documents at the appropriate time.
  - c. Provide whatever assistance is possible to the planers, surveyors and consultants employed by the HC to plan and transfer the land.
  - d. Act as the account administrator on the project
5. The parties agree to set up a steering committee that will meet at least once every month for the parties to keep each other updated on progress and coordinate the development efforts.
6. The parties agree to draw in the provincial department of housing to deal with any disputes, the decision of the department will be final.
7. This agreement will be cancelled if:

- a. the HC is unable to commence development on the land within 36 months of the date of this agreement
  - b. is unable to secure a government subsidies
  - c. does not obtain the necessary planning and building approvals from the municipality
8. Any changes to this agreement will be put in writing and signed by both parties.
9. The addresses of the parties are as follows
- a. Address of HC  
.....  
.....  
.....
  - b. Address of LA  
.....  
.....  
.....
10. The following people are duly authorised to sign on behalf of their organisation, and accept the conditions of this contract.

	Name	signature	date
a. HC	...EXAMPLE .....	.....	.....
b. Witness	...EXAMPLE .....	.....	.....
c. Municipality	...EXAMPLE .....	.....	.....
d. Witness	...EXAMPLE .....	.....	.....

## **Example 2: letter of appointment of engineering firm**

Pakamisa Housing Cooperative  
7 Pakamisa drive  
Pakamisa  
5300

The Director  
Appropriate engineering Consultancy  
500 Main Street  
Kakulu City  
5300

Date

Dear Sir

### **Acceptance of engineering quote – Pakamisa Housing Cooperative project**

We hereby accept your quote dated 31 September 3004 to provide engineering services for us in the development of 200 houses in Pakamisa Zone 5.

The work will be divided into 5 stages

1. Preliminary work
2. Subsidy application
3. Detailed design and tender administration
4. Contract administration
5. certification

You will be paid a fixed fee based on price per unit.

1. Preliminary work: R50 / unit
2. Subsidy application: R200 / unit
3. Detailed design and tender administration: R400 / unit
4. Project administration R300 / unit
5. Certification R50 / unit

Payment will be made on completion of work done. Work on each stage will only start after received written instructions to proceed. Work on stage 1 Preliminary work and stage 2 subsidy application will be at risk and paid for from the subsidy funds if subsidy is approved.

You will be expected to start work on stage 1 on acceptance of this agreement with the submission made for a housing subsidy within 4 months. Detailed design and tender administration will take 6 months after approval of the subsidy.

Any changes to this letter of appointment will be put in writing.

You will attend monthly steering committee meetings with us to report on progress and receive further instructions from the chairperson of our cooperative.

Yours faithfully

EXAMPLE

Name  
Chairperson Pakamisa Housing Cooperative

.....  
I hereby, as a duly authorised, accept this appointment on behalf of Appropriate  
Engineering consultancy

Name	signature	position	date
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...EXAMPLE.....	.....	.....	.....
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**Example 3: Agreement with contractor**

**Agreement between  
Pakamisa Housing Cooperative  
(the HC)  
And  
Integrated Solutions Project Management Company  
(the contractor)**

1. Noting that the HC would like to employ a contractor to help them manage the construction of 200 houses in Pakamisa zone 5, using government subsidy and following the PHP
2. Noting that the Contractor submitted a tender to build these services and houses.
3. It is hereby agreed that the HC will employ the contractor to build, complete and fix any defects in the services and houses; and the HC will pay the contractor for this work from housing subsidy monies.
4. In particular the contractor will
  - a. Build and complete services within the housing cooperative and 200 houses as per the attached information:
    - i. Annexure 1: layout plan
    - ii. Annexure 2: services designs
    - iii. Annexure 3: house designs
    - iv. Annexure 4: service specifications and budget
    - v. Annexure 5: house specifications and budget
    - vi. Annexure 6: services and house construction programme
    - vii. Annexure 7: services and house labour schedule
  - b. Correct all defects to services and houses
  - c. Provide the HC with financial guarantees that s/he will complete the work
  - d. Arrange for and be responsible for all material on site
  - e. Arrange for and be responsible for all security on site
  - f. Arrange his/her own bridging finance
5. In particular the HC will
  - a. Pay the contractor for work completed and corrected as per the attached payment schedule (annexure 8), taking into account:
    - i. retention monies; and
    - ii. penalties for work not completed on time
6. This agreement can be cancelled if
  - a. The HC is not satisfied with the work of the contractor
  - b. Either party does not adhere to the conditions of this contract
7. Appropriate engineering consultancy will provide contract administration on behalf of the HC.

- 8. In either part has a dispute than:
  - a. the parties will first meet to try and solve the dispute; failing which
  - b. the Kakulu Municipality will be brought in to mediate and make a recommendation; failing which
  - c. legal proceedings will be entered into.
- 9. Any changes to this agreement must be put in writing and signed by the parties
- 10. The addresses of the parties are as follows

e. Address of HC  
 .....  
 .....  
 .....

f. Address of contractor  
 .....  
 .....  
 .....

- 11. The following people are duly authorised to sign on behalf of their organisation, and accept the conditions of this contract.

	Name	signature	date
a. HC	...EXAMPLE .....	.....	.....
b. Witness	...EXAMPLE .....	.....	.....
	.....		
c. Contractor	...EXAMPLE .....	.....	.....
	.....		
d. Witness	...EXAMPLE .....	.....	.....
	.....		

**Example 4: Letter of appointment with material supplier (e.g. buying blocks from local block yard)**

Pakamisa Housing Cooperative  
7 Pakamisa drive  
Pakamisa  
5300

The manager  
River View Block manufacturing Cooperative  
1 Review View Road  
Kakulu City  
5300

Date

Dear Madam

**Acceptance of Block supply quote – Pakamisa Housing Cooperative project**

We hereby accept your quote dated ..... to supply blocks to the Pakamisa Housing Cooperative project in Pakamisa Zone 5.

The number of blocks, and price of blocks is shown on the attached schedule (annexure 1).

Blocks will be delivered to Integrated project Solutions company who are responsible for construction on site. Delivery will be made at times and quantities as outlined in the attached material schedule prepared by IPSC (annexure 2). These dates may be changed in writing by ISPC.

This quote is valid for 12 months from date of this acceptance.

Payment will be made on delivery of material by our account administrators (Kakulu Municipality), as certified by our certifiers (appropriate Engineering consultancy). Payment will take less than 3 weeks.

If you fail to deliver blocks as agreed you will be charged a penalty of 5% per day on the value of the blocks to be delivered.

Substandard blocks will be replaced with blocks of the correct quality and standard at no cost

Any changes to this agreement must be put in writing.

Yours faithfully

EXAMPLE

Name  
Chairperson Pakamisa Housing Cooperative

.....  
I hereby, as a duly authorised, accept this letter of appointment on behalf of River  
View Block manufacturing cooperative.

Name	signature	position	date
...EXAMPLE.....	.....	.....	.....



**Example 5: Letter appointment of maintenance company**

Pakamisa Housing Cooperative  
7 Pakamisa drive  
Pakamisa  
5300

The manager  
Quick Plumbers  
101 manufacturing road  
Kakulu City  
5300

Date

Dear Madam

**Acceptance of quote – maintenance service to Pakamisa Housing cooperative**

We accept your quote dated ..... (see copy in annexure 1) to provide a property maintenance service to our Housing Cooperative.

In summary, the work involves:

- Maintaining HC property on instruction of the maintenance committee
- Being on 24 hour standby to deal with agreed emergency maintenance (e.g. burst pipes)
- Supplying all materials, labour and expertise necessary for the maintenance tasks
- Managing any specialist maintenance contractors
- Developing a maintenance plan
- Undertaking regular planned maintenance work as per the maintenance plan
- Producing monthly maintenance reports to the HC

See annexure 2 for a more detailed breakdown of your job description.

The fee for your service will be R.... per hour up to a maximum of R.... per month. Any additional work undertaken by you beyond this maximum will be at your own expense.

You will keep a time sheet of work undertaken on site. Payments will be made on a monthly basis based on work done.

The HC has an account with Self Help Material Suppliers. You will submit material requisition claims to the maintenance committee for approval prior to purchasing material.

This appointment is for 24 months starting from the date of your acceptance of this offer.

If we are not satisfied with your service we will give you 1 months written notice.

Any changes to this agreement will be put in writing.

Yours faithfully

EXAMPLE

Name  
Chairperson Pakamisa Housing Cooperative

.....  
I hereby, as a duly authorised, accept this letter of appointment on behalf of Easy  
plumbers.

Name	signature	position	date
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...EXAMPLE.....	.....	.....	.....
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