



Compiler guidance note

Component document: C1.3 – Form of Guarantee

Function and broad outline of contents

Guarantees performance by the contractor with a stated financial benefit in the event of non-performance. (Three party contract between the employer, the contractor and a bank / insurance company).

Notes

Sub-clause 4.4.4.3 states that *guarantees of an insurance company or bank required in engineering and construction works contracts shall not substantially differ from the samples provided by the drafters of the forms of contract listed in 4.4.4.1 a). Such guarantees shall not normally exceed 10% of the contract price or, in the case of a variable guarantee, 12,5%.*

Sub-clause 4.4.4.4 states that *retention monies that are held shall not exceed 10,0% of any amount due to a contractor. Where guarantees of an insurance company or bank that are provided are equal to or greater than 10% of the contract price, the total amount of retention monies held shall not exceed 5% of the contract price.*

It should be noted that each of the four recommended forms of contract (JBCC, FIDIC, GCC and NEC3 has a form of guarantee associated with it, which represent a best fit for each form of contract. Furthermore some forms of contract provide for a range of guarantees, including parent guarantees. This approach permits the use of these in large and complex contracts.

Note: 1 Each of the publishers of the NEC, GCC, FIDIC and JBCC recommend the use of a sample or standard performance guarantees. It is not necessary to include a copy of these documents in a procurement document if the following recommendations are followed.

Form of contract	Type of guarantee	Recommended Contract Data
GCC 2004	Guarantee in accordance with the provisions of the Form of guarantee	Insert the following wording in Part 1 of the Contract Data: <i>The Form of Guarantee is to contain the wording of the proforma document included the General Conditions of Contract</i>
FIDIC (Short)	A performance security in the form approved by the Employer.	Insert the following wording in Part 1 of the Contract Data: <i>The form of the performance security shall not substantially differ from the Example Form of Performance Security – Surety Bond / Example Form of Performance - Security Demand Guarantee published in the FIDIC Conditions of Contract for Construction for Building and Engineering Works designed by the Employer.</i>
FIDIC (Red)	The performance securities are required to be in the form annexed to the Contract Data.	Insert the following wording in Part 1 of the Contract Data: <i>The form of the performance security shall not substantially differ from the Example Form of Performance Security – Surety Bond / Example Form of Performance - Security Demand Guarantee contained in these conditions of contract.</i>
FIDIC (Yellow)		
FIDIC (Silver)		
JBCC MWA	The contractor may be required to provide a construction guarantee.	The MWA makes reference to a standard form. There is no need to insert any data relating to construction guarantees in the Contract Data. This form may be downloaded without charge from http://www.jbcc.co.za/free_downloads/S2128.August%202007.pdf
JBCC PBA	The contractor is required to provide either a variable construction guarantee or a fixed construction guarantee in terms of the JBCC Construction Guarantee form.	The PBA makes reference to this standard form. There is no need to insert any data relating to construction guarantees in the Contract Data. This form may be downloaded without charge from http://www.jbcc.co.za/free_downloads/S2122.August%202007.pdf
NEC3 ESC	No option provided for performance bond	Insert Option X13: Performance Bond form the NEC3 ECC as a Z clause if required and the same Contract Data as for the NEC3 ECC.
NEC3 ECC	The contractor is required to provide a performance bond in the form set out in	Include in Contract Data where Option X13: Performance Bond is used:
NEC3 TSC		

NEC3 PSC	the Works Information / Scope where Secondary Option X13 / Service information	<ul style="list-style-type: none"> • <i>The amount of the performance bond is R.....</i> • <i>The form of the performance bond is not to differ substantially from the sample Performance Bond published on the website www.jointcivils.co.za</i> <p>Or</p> <ul style="list-style-type: none"> • <i>The maximum guaranteed amount is R, reducing to%, then to% and finally to%</i> • <i>The form of the performance bond is not to differ substantially from the sample Reducing Value Guarantee published on the website www.jointcivils.co.za</i>
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Where specific wording is required, a proforma form of guarantee should be included in C1.3 in the procurement document and the Contract Data should specify that this form is to be used without amendment.

Standard or sample forms of securities relating to advance payment or parent guarantees may be found on the websites www.jointcivils.co.za or http://www.jbcc.co.za/free_downloads or in the FIDIC Conditions of Contract.

- 2) GCC 2004 requires that the Form of Guarantee be delivered to the Employer within such time as may be stated in the Contract Data.
- 2 JBCC Series 2000 Series (Principal Building Agreement) requires that the Construction Guarantee be provided to the Employer within twenty-one calendar days of written acceptance of the contractor's tender.
- 3 FIDIC Short Form of Contract requires the performance security to be delivered to the Employer within 14 days of the Commencement Date. The FIDIC Red and Yellow Book require the securities be delivered to the Employer within 28 days of receiving the fully completed Form of Offer and Acceptance.
- 4 The NEC Black Book requires the performance bond to be given to the employer within four weeks of the Contract Date if it was not given by the Contract Date.
- 5 The Standard Conditions of Tender permit the employer to require the tenderer to submit the Form of Guarantee prior to the employer's acceptance and formation of the contract; viz:

F.2.20 Submit securities, bonds, policies, etc.

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

- 6 The acceptance portion of the Form of Offer and Acceptance states the following:

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.
- 7 Forms of guarantee are bound into GCC and FIDIC. JBCC publishes forms of guarantee separately. Suitable forms of guarantee for use with the NEC3 may be obtained from SAICE.
- 8 Portion 2 of the Contract Data (Contract Data completed by the Contractor) should make provision for a tenderer to state what guarantee he has elected to provide, if the employer offers a choice.