



CAPRICORN DISTRICT MUNICIPALITY RETENTION POLICY

Notwithstanding the date of approval, this policy shall remain effective until approved otherwise by Council and may be reviewed on an earlier date as deemed necessary.

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1. DEFINITIONS

- 1.1 “Council” means a Municipal Council established in Section 18 of the Municipal Structures Act and referred to in Section 157 (1) of the Constitution.
- 1.2 “CIDB” is a national body established by an Act of Parliament (Act 38 of 2000).
- 1.3 ‘Contract’ means the written agreement entered into between the Council and the Contractor, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.4 “Contractor” the firm or person signs the contract and commissioned to construct the work.
- 1.5 “Defects” are aspects of the works that are not in accordance with the contract. The usual occurs because of design deficiencies, material deficiencies, specification problems or workmanship deficiencies.
- 1.6 “Defects Liability Period” the period for which the contractor is required to “guarantee” the completed works and to rectify any defects that may be discovered or appear. The defects liability period starts when the Municipality is satisfied that the works are complete and takes delivery or handed over to the Municipality.
- 1.7 “Municipality” means Capricorn District Municipality established in terms of Section 155 of the Constitution.
- 1.8 “Register” means the official register kept receipting all unclaimed deposits.
- 1.9 “Retention” this is money, usually from 5% to 10% of the value of the work done, that is held back by the Municipality to correct defective work.
- 1.10 “Subcontractor” appointed by the contractor to perform a part of the construction works under a subcontractor.
- 1.11 “Disputes” dispute is defined as an unresolved matter of dissatisfaction or differences.

2. INTRODUCTION

The purpose of this policy is to ensure sound, uniformity and proper administration of all retention money retained by the Municipality.

3. OBJECTIVE OF THE POLICY

The objectives of the policy are to:

- 3.1 To provide a framework on how to deal with retention monies withheld by the Municipality for capital projects.
- 3.2 To reduce the liability of the Municipality.

4. BACKGROUND

Retention is a percentage usual from 5% to 10%, of the amount certified as due to the Contractor on an interim certificate, which is deducted from the amount due and retained by the Municipality. The purpose of the retention is to ensure that the Contractor properly completes the activities required of them under the contract.

5. APPLICABLE LEGISLATION

- 5.1 The Construction Industry Development Board Act 38 of 2000. This act regulates the construction industry as a whole and publishes standards, directives and regulations to give effect to this objective.
- 5.2 General Conditions of Contract for Construction Works.

6. DEFECTS LIABILITY PERIOD

- 6.1 The Defects Liability Period starts when the Certificate of Completion is issued and continues for the period agreed to in the Contract.
- 6.2 During the Defects Liability Period, the Contractor has to obey all written instructions from the Engineer to conduct repairs and fix any defects which appear in the Permanent Works, so that, at the end of the Defects Liability Period, the Permanent Works are in the condition required by the Contract.
- 6.3 If the Contractor does not, due to his own fault, finish the repair work or fix the defects by the end of the Defects Liability Period, the Defects Liability Period will continue until all work instructed by the Engineer is done.

7. PAYMENT OF RETENTION

- 7.1 On completion of the project the consultant will issue a certificate of practical completion with snag list to be attended by the contractor. Once the contractor has dealt with the snag list certificate of completion will be issued and 50% of the retention monies retained by the municipality can be released.
- 7.2 The project has a defects liability of one year.

- 7.3 Once the defects liability has lapsed the consultant, project manager and contractor will conduct final site inspection and if the project is in working conditions, final completion certificate will be issued and signed off by consultant, project manager and contractor and the contractor can claim the remainder of the retention money.

8. RETENTION REGISTER

- 8.1 The Municipality will keep a retention register and the register will be maintained and updated regularly.

9. UNCLAIMED RETENTION

- 9.1 It is the responsibility of the contractor to submit a claim for the retention once the defects liability period has lapsed. Should the contractor experience challenges with the consultant in preparing such claim a formal letter must be written to the municipality for assistance.
- 9.2 Unclaimed retention which is over one (1) year after the defect liability period will be written off based on this policy and amount written off from the retention register.
- 9.3 The municipality will appoint term contractor to repair the damages that occurred during retention period in order to make the project functional with the above mentioned written off retention.

10. DISPUTES AND HOW TO RESOLVE THEM

The Municipality standard form contracts will cater for a dispute resolution mechanism which will state the procedure to be followed when a dispute arises with regards to retention.

11. REVIEW

This policy will be reviewed as and when required to ensure that it complies with changes in applicable legislation, reporting framework and the operating requirements of the Municipality.