

Candidate Number:

Room No.:

Seat No.:

Section II

Short Essay Questions

The HKIA/ARB Professional Assessment 2010

Paper 2

Building Contracts & Professional Practice, Professional Conduct & Conditions of Agreement and Scale of Charges

8 December 2010

9:00 am – 1:00 pm (4 hours, whole paper)

11:30 am – 1:00 pm (Section II only)

Venue

Rotunda 3, 6/F

Hong Kong International Trade & Exhibition Centre (HITEC)

Kowloon Bay

Section II (50 marks):

Short Essay Questions (pages 1 – 6)

Part A Answer **ONE** of the TWO questions (Total 20 marks)

Part B Answer **TWO** of the FOUR questions (15 marks each, total 30 marks)

Time allowed: 1 hour 30 minutes

Notes:

1. 3 answer books are provided for you.
2. Please attempt each question on a separate answer book and mark the section and question numbers you attempt on the answer book.
3. Remember to write your candidate number and room/seat number on the answer book and question paper. DO NOT write your name on the question paper and answer books.
4. *In all cases, the term "Building Contract" shall mean the "Agreement and Schedule of Conditions of Building Contract (With Quantities) (2005 edition) and (Without Quantities) (2006 edition)" and "Standard Form of Building Contract" unless stated otherwise. The characters and circumstances in each question are independent of and should not be correlated to those in other questions.*

All answer scripts, question papers, drafts and loose sheets **must not** be taken out of the assessment venue.

Paper 2 – Section II – Building Contracts & Professional Practice, Professional Conduct & Conditions of Agreement and Scale of Charges 2010

Page 0

Section II (Part A)

Answer **ONE** question from Question A1 and Question A2. (Total 20 marks)

Question A1 (20 marks)

- 1) A Graduate Architect together with friends registered for an open “Design Ideas Competition” organized according to the HKIA Rules for Architectural Competition. A few days later, the Employer informed that his company has also registered for the competition and would like to assign the Graduate to work on the competition design team.

Discuss the action to be taken if the Graduate has decided NOT to withdraw from the competition. (6 marks)

- 2) The Graduate’s design is awarded first prize. The Jury recommend the winner to collaborate with an Architectural Practice with sufficient experience and resources to carrying out the project.

Discuss how the Graduate shall respond if he accepts the request. (7 marks)

- 3) In view of the complexity of the project, the promoter requests the winner to another Architectural Practice with substantial track record for similar projects.

Discuss if the winner accept this request, **what are** the critical issues such as duties and liabilities needed to be considered by the winner. (7 marks)

Question A2 (20 marks)

You have been commissioned as an architect for a new building in Sai Kung.

Drainage of the building is to be connected to a terminal manhole located in a public road. Several utility companies have works within this section of the road. Highways Department could only issue excavation permit (XP) one at a time. You have been urging the contractor, for over one year before the completion date, to proceed with the terminal manhole works but the contractor did not apply for the XP until 6 months before the anticipated completion date.

However, as soon as the existing drain pipes were exposed, it was found that the level is much lower than that shown in the 10-year-old as-built drawing retrieved from Drainage Service Department. Major drainage redesign with BD approval is necessary. The contractor is now asking you for the revised design drawings. Most importantly, the contractor cannot do the terminal manhole works until 4 months later when all the utility companies have finished their works. In effect, there was 2 month delay to the completion of the project.

The Client is very upset and suggests that you shall be responsible for all abortive works and consequential delay costs since it is apparent that you should have instructed the contractor for a site verification survey much earlier.

- 1) **How** could you avoid this delaying event in the first place and what actions could you do when the contractor starts ignoring your urge for terminal manhole works? (6 marks)
- 2) **Discuss** your duties and liabilities and argue whether you should be considered as negligent or not. (7 marks)
- 3) **Write** to the Client and advise with justifications who should pay for all the additional costs associated with this incident under such circumstances. (7 marks)

Section II (Part B)

Answer **TWO** questions from Question B1, Question B2, Question B3 and Question B4.
(15 marks each, total 30 marks)

Question B1 (15 marks)

You are the Architect appointed for a single family house in a flat vacant site in the Peak. Your structural engineer advises that the bedrock is deep and the building would probably be founded on mini-piles.

Please **suggest** to your Client the most appropriate procurement method for the following work packages in order to construct the house:-

- 1) Ground Investigation Works (5 marks)
- 2) Foundation Works (5 marks)
- 3) The Main contract Works (5 marks)

Elaborate your rationale and advantages in adopting the suggested type of Contract and **list** the essential documents to be included in the suggested tenders.

Question B2 (15 marks)

- 1) You are the Architect of a single thirty storeys residential building.

The Client is rather confused by the term “lump sum fixed price” contract and asked for your advice on whether there are any other possible adjustments that will be made on the contract sum in the contract. Please **list out five of them**.
(5 marks)

- 2) For the same project, the Main Contract is based on specification and drawing and is a lump sum fixed price contract referring to the Standard Form of Building Contract - Without Quantities (2006 Edition), with clause for the fluctuation cost deleted.

During construction, the supply cost of the steel reinforcement bar surged up by approximately 50% as compared with that at the time of the award of the contract. The contractor is facing financial difficulties and requested for additional reimbursement of this fluctuation in material cost. The Client had set a target completion date which cannot be delayed.

Please **discuss the contractual position and possible courses of actions**.
(10 marks)

Question B3 (15 marks)

You are involved in the contract administration of a mixed development project under the Standard Form of Building Contract – Without Quantities.

The relevant Contract Dates are listed as follows:

- The Retail Podium portion, as Phase 1, shall be completed on 20 November 2009.
- The Residential Tower, as Phase 2 shall be completed on 20 November 2010.
- The Defects Liability Period is 12 months for both phases.

The Phase 1 works were completed one month in advance. The Retail Podium was handed over to the Client on 20 October 2009 and opened to use in February 2010.

The main water pipes at podium level were found leaking due to poor workmanship and bursted on 15 October 2010 causing serious flooding. The fitting out works within the Retail Podium and the main entrance and lobby of Residential Tower had been seriously damaged.

Subsequently, the Residential Tower, Phase 2, can only be completed until the end of December 2010.

- 1) **When** should the following Certificates be issued for different phases and **what** are their contractual significances?
 - a. Certificate of non-completion (4 marks)
 - b. Sectional / Substantial Completion Certificates (4 marks)
 - c. Defects Rectification Certificates (4 marks)
- 2) You have repeatedly reminded the Contractor to rectify the remaining defects for Phase 1 and the Defect Liability Period had been expired. **What** are the implications under the Contract and how the Phase 2 is being affected under the Building Contract? (3 marks)

Question B4 (15 marks)

Background

During the contract period the Contractor served a First Notice under Clause 25 (Extension of Time) of the Contract submitting that delay has been caused by the Architect's issue of an instruction varying part of the Works and seeking an extension of time of 120 days. The Contractor has failed to serve a Second Notice in accordance with the provisions of Clause 25(Extension of Time).

The Architect makes a preliminary assessment that delay has been caused by the instruction and that the Contractor may be entitled to 80 days extension of time (EOT). The Employer disagrees and has written a letter to the Architect "instructing" the Architect to grant no more than 60 days EOT stating also that any EOT greater than 60 days would amount to negligence by the Architect.

Question

Discuss the issues arising from the above. Your answer should cover but not be limited to the following:- (15 marks)

- 1) The approach the Architect should take and matters he should/should not take into consideration faced with the claim for EOT by the Contractor and the Employer's letter;
- 2) Whether and explain the reasons the Employer is entitled to "instruct" the Architect concerning the EOT to be granted;
- 3) Whether and explain the reasons the Employer is entitled to make any representations to the Architect concerning EOT and the Architect's response, if any, to this;
- 4) The relevance, if any, of the Contractor failing to serve a Second Notice;
- 5) The EOT, if any, that the Architect should grant to the Contractor;
- 6) The information an Architect would expect to see in the First and Second Notices referred to in Clause 25 (Extension of Time);
- 7) Any other comments considered relevant.

END OF PAPER