

Candidate Number:

Seat No.:

Section II

Short Essay Questions

The HKIA/ARB Professional Assessment 2012

Paper 2

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

21 November 2012

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

11:15 am – 1:00 pm (Section II only)

Venue

Rotunda 3, 6/F

Kowloonbay International Trade & Exhibition Centre (KITEC)

Kowloon Bay

Section II (50 marks):

Short Essay Questions (pages 1 – 5)

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 hours 45 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.

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Section II (Part A)

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

Question A1 (20 marks)

An Architect had agreed with the Client the fee proposal for Architectural Consultancy Services for a residential building development. After the feasibility study is completed, the Architect is invited to revise the fee proposal to include services for Structural Engineer, Building Services Engineer and interior design for the show flat and off site sales office.

- 1) Explain to the Employer the possible arrangements of additional fee for the following:
 - a) Engagement of Structural Engineer and Building Services Engineer both under Sub-consultancy Agreement with the Architect **(5 marks)**
 - b) Engagement of in-house Interior Designer for the Show flat and off site sale office. **(5 marks)**

- 2) After the General Building Plans approval by the Buildings Department base on layout previously accepted by the Employer, the Employer has instructed to revise the layout and include duplex units on the top floors with addition of 1 storey. The Architect has applied for additional fee but is rejected by the Employer who claims there is no change in the total GFA.

Explain if the Architect's additional fee application is valid. **(5 marks)**

- 3) After the transfer plate is completed on site, the Structural Engineer reports that there is insufficient loading allowed to cater for a roof feature approved by the Employer. The Architect submits a revised drawing to the Employer for approval in which the roof feature is deleted. The Employer accuses the Architect of negligence.

Explain if the Employer's accusation is valid. **(5 marks)**

Question A2 (20 marks)

An architect of a consultancy firm was in financial difficulty. A contractor under his supervision in a project, eventually become good friends, offered to lend him money. The architect was grateful for his friend's assistance and promised to return the money next month. Almost at the same time, the contractor had recently procured some building materials for this project but unable to deliver on time. In order to avoid further delay to the program, he asked the architect to approve an alternative material which not only avoids the possible deduction of liquidated damages due to delay but also incurs some savings to the contractor. In return, the contractor would not ask the architect to repay the loan.

- 1) Would the architect breach the Prevention of Bribery Ordinance if he acceded to the contractor's offer? **(2 marks)** Please use the four major elements of a corruption offence to support and explain your answer. **(8 marks)**
- 2) Would the contractor be legally liable for making such an offer to the architect? **(1 mark)** Please explain your answer. **(2 marks)**
- 3) Apart from the legal requirements, what other factors should the architect consider in deciding whether to accept the offer or not? Please elaborate. **(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)

In a mega scale project, the Employer needs to build a high voltage substation. The Architect and the Engineers will be responsible for the design. The estimated overall construction cost is about \$150 million with about \$110 million for the HV equipment and \$40 million for the builders' works. These two major parts of works will be carried out by two separate contractors.

- 1) Please advise three alternative contractual arrangements between these two contractors and the Employer and explain and discuss their advantages and disadvantages. **(9 marks)**

- 2) The payment terms for the builder's works will be normal monthly payment based on work in progress but for the HV equipment, the payment terms will be based on achievement of milestones. Please advise the advantages and disadvantages of these two types of payment method. **(6 marks)**

Question B2 (15 marks)

- 1) Please list out the contractual impacts of the issuance of Substantial Completion Certificate. **(10 marks)**

- 2) The Employer wants to add the following as conditions precedent to the issuance of Substantial Completion Certificate. Please advise the contractual implications to the Employer. **(5 marks)**
 - a) Obtaining Occupation Permit.
 - b) The submission of satisfactory Operation and Maintenance Manual for all the M&E equipment.
 - c) The finishing of training of all the Employer's staff in the use of the M&E equipment.

Question B3 (15 marks)

The Architect has made two decisions which the Contractor is dissatisfied with:-

- a) The Contractor applied for HK\$1,500,000 in an Interim Payment Application but the Architect considered that this was too high and certified only HK\$1,000,000 in the relevant Interim Payment Certificate. The Contractor alleges that the Architect has under-certified.
- b) The Employer wrote to the Architect (copied to the Contractor) emphasising that in his opinion 40 days extension of time (EOT) should be awarded instead of the 80 days claimed by the Contractor. Consequently, the Architect awarded 55 days EOT to the Contractor.

Giving reasons for your answers:-

- 1) Do you consider the Contractor have a claim against the **Architect** for the alleged under-certification set out in (a) above? **(5 marks)**
- 2) Do you consider the Contractor have a claim against the **Employer** for the alleged under-certification set out in (a) above? **(5 marks)**
- 3) Do you consider the Contractor have a valid claim against the Employer for interfering with the Architect's assessment of EOT? **(5 marks)**

Question B4 (15 marks)

You are the Architect for a subsidized school building project. The school body has secured HK\$80M funding from government while they have got HK\$20M from their fund raising campaign for some non-school standard facilities.

The building contract used is the new Standard Form with Quantities. There is a 5% contingency built into this HK\$100M building contract. Two months after contract commencement the contractor notified you that the bedrock levels in certain areas are different from the geotechnical profile formulated from the ground investigation done during the design stage. As a result, your engineer has to modify the footing design and to submit to Buildings Department for approval / consent. As such, the normal progress of works is disrupted and the contractor is claiming HK\$3M as variation works as well as extension of time (EOT). The client is upset as why the accurate geotechnical profile could not be known earlier and that the contingency has almost been used up. The client has not prepared for any more fund-raising campaign. He is asking you to process the EOT claim carefully and ask if the EOT attracts further financial implications in addition to the VO.

- 1) Which contract sub-clause would you use to justify the EOT? Identify and elaborate on the contract provisions as why the contract may be entitled to financial implications for the EOT, and discuss on the rationale for giving the contractor further money in addition to VO. **(5 marks)**
- 2) Write a letter to the client analyzing the current circumstances and making recommendations as the way forward. **(5 marks)**
- 3) How would you carry out your cost control duty in the first place? Elaborate your answer with actual examples. **(5 marks)**

END OF PAPER