

Candidate Number:

Room No.:

Seat No.:

Section II

Short Essay

Questions

The HKIA/ARB Professional Assessment 2009

Paper 2

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

9 December 2009

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 – 3)

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 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.

Section II (Part A)

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

Question A1 (20 marks)

You have been engaged as Architect providing normal services under HKIA Conditions of Engagement for a 30-storey medium scale office development, please discuss your contractual duties:-

- A1(a) as an agent of your Client (4 marks)
- A1(b) with respect to the M/E consultant engaged by the Client directly (4 marks)
- A1(c) with respect to the Main Contractor for the superstructure works (4 marks)
- A1(d) with respect to the nominated curtain wall sub-contractor engaged under a design and built contract with the Main Contractor (4 marks)
- A1(e) in site supervision and inspection of work (4 marks)

Question A2 (20 marks)

- A2(a) A charity organization has been granted a piece of land in Tin Shui Wai, N.T. They intend to build a 100-bed elderly home using the Design and Build (D&B) method.

A friend of yours, who is a contractor, is keen to tender for this D&B project, which requires a design proposal to be submitted with the lump sum tender. As he will not be remunerated from the client for the preparation of this D&B tender submission, he requests you to team up with him, share the risk, and prepare a design submission without pay.

(5 marks)

Write to him and explain why you should be paid.

- A2(b) Four years later, the project has now been completed. The charity organization has just called you and complained that the curtain wall at the entrance is leaking. You have found out that the as built details appear to deviate from the BD approved drawings which were prepared by the specialist sub-contractor submitted to BD via you as the AP.

Discuss your statutory liability. (5 marks)

Discuss your liability in contract and in tort. (5 marks)

What are the appropriate actions to be taken? (5 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 a project Architect of a 30-storey grade A office building. The Employer has a budget of about \$100 million with normal programme and design requirements. The construction works will be tendered out in packages.

Please advise

- (1) what types of contract you will recommend for each of the following work packages below (in respect of the contractor's scope of work and how the contract sum is derived) and
- (2) the underlying principle for such recommendation.

- | | |
|--------------------------|-----------|
| B1(a) Site Investigation | (3 marks) |
| B1(b) Demolition | (3 marks) |
| B1(c) Piling Foundation | (4 marks) |
| B1(d) Main Contract | (5 marks) |

Question B2 (15 marks)

- B2(a) A Nominated Sub-Contractor (NSC) is required to provide a sub-contractor's warranty and a surety bond to the Employer.

Explain why such warranty is required under contract and discuss the purpose of the surety bond. (5 marks)

- B2(b) If the Nominated Sub-Contractor has gone into liquidation, describe the possible impacts to the project. (3 marks)

What action should the project architect be taken? (4 marks)

How the above actions can mitigate the situation? (3 marks)

Question B3 (15 marks)

There are various ways to release Interim Payments to the Contractors. Please discuss the advantages and disadvantages of each of the following forms of Interim Payments and the best situation under which each shall be applied.

- B3(a) Predetermined payments on a regular basis. (5 marks)

- B3(b) "Milestone" or "stage" payments, i.e. pre-determined payments made upon completion of specific sections of work. (5 marks)

- B3(c) Detailed interim valuations of the construction works completed as it proceeds. (5 marks)

Question B4 (15 marks)

The current position concerning progress of the Works is as follows:-

The Contractor was given delayed possession of the Site for which the Architect has granted an extension of time (EOT). The Architect also fixed an Extended Date for Completion.

The Architect is of the preliminary opinion that the Contractor has subsequently delayed the Completion of the Works. The Extended Date for Completion referred to above has elapsed. The Employer is pressing the Architect to issue a certificate of delayed under clause 24.

The Contractor served a "first notice" under Clause 25.1 (1) seeking EOT in respect of variations instructed by the Architect but failed to submit a second notice under Clause 25.2(1). The Architect has yet to review the first notice in detail.

Explain the steps which the Architect should take and the key issues he must decide. Your answer should address the following aspects:

- B4(a) Whether the Architect may issue a Certificate of Delayed Completion immediately without doing anything else? (2 marks)
- B4(b) Whether the Architect may consider the Contractor's claim for EOT at all bearing in mind that the Contractor failed to issue a Second Notice? (2 marks)
- B4(c) Whether, in principle, it is possible for the Architect to grant a further EOT but also issue a Certificate of Delayed Completion? (2 marks)
- B4(d) What should be included in the Contractor's first and second notices? (3 marks)
- B4(e) What time limits apply to the Contractor with regard to submission of a first and second notice? (2 marks)
- B4(f) What time limits apply to the Architect in:-
(i) giving the Contractor an EOT; (2 marks)
(ii) deciding not to give an EOT. (2 marks)

END OF PAPER