

Short notes of APC Workshop on 23 April 05

General techniques

1. Work out a plan to work with, and follow your drawn out guideline to assist you in answering, to avoid panic writing
2. Read the question clearly
3. use heading to respond to sub-questions
4. use of English to the extent which is adequate to communicate professionally

Question 1

5. time control and management in answering questions
6. read the question to see what is asked for, not just putting down all you know
7. probable changes – calling for your technical knowledge and more importantly, the associated thinking
8. indicative cost – giving you a freedom to conduct estimating, in lieu of indulging in detail calculations which will erode your available time
9. user's requirement will dictate the design and final provisions in a building. With this approach, i.e. think from the point of view of the user, it helps to expand your associated thinking in similar type of questions
10. screen information in a given cost plan and try, at least, to make changes to the major elements consequent to the design change
11. serviced apartment – what should be included to serve such purpose? Furniture, fitting and equipment can simply be worked out based on, say \$80,000 per unit and times the number of units
12. For changes to structure, can refer to engineer's advice
13. addition of swimming pool, what about associated E&M? what about the reduced rooms due to such addition?
14. prepare a check list for changes
15. conversion from existing cost plan: when using existing elemental unit rate/cost to build up new, need to reflect the synopsis information (e.g. structural changes affecting the upper floors should only affect the upper floor structure, not the whole building)

Question 2

1. simplifying preambles should not be used with the intent to transfer risk to the contractor for inadequate designs

Short notes of APC Workshop on 30 April 05

Question 3

1. style and structure of your answer
2. read the questions' request to relate your answers to the question. For example, how did the answer address the employer's concern on the financial difficulties of the respective tiers of contractors/sub-contractors? How can your answer help to clarify the employer's confusion?
3. considerations for others taking up the liquidated named sub-ctr
4. why named sub-ctr in lieu of the normal Nominated Sub-Contractor
- avoidance of the employer's liability to re-nominate in the event of the named sub-ctr's default
5. when engaging the labour from the liquidated sub-ctr, and when considering the request from labourers for unpaid wages/ works, beware of the challenge from the liquidator for **"unfair preference"** to these labourers (they being no different from any other creditors), thereby exposing the employer to double payment
6. Named sub-contractor: beware of the different modes in existence in the market. Take note that the original intended usage of named sub-contracting (with MC intensively involved in selection) could be abused.
7. use of supplemental agreement should only be looked upon as a tool to consolidated agreed terms and arrangement, i.e. to record down the solution formally and legally; just a mention of supplemental agreement is not a solution

Question 4

1. Witnesseth clause is intended to witness the signatory of his/her state of mind, not under duress etc.

Short notes of APC Workshop 7 May 2005

Discussion questions from candidates

1. Suppose I am a Contractor QS, the on-demand performance bond (10% of the contract sum) for my project was called. Can I stop the employer from calling the bond if I can prove that I am not in default? (Assume that the reason for calling the bond is Employer's financial difficulty)

- Which party is responsible to respond to the calling of a bond?
The bondsman or the contractor?
- Need to study the exact wording of the on-demand bond? Any stipulated conditions precedent to the demand for payment, such as default of the contractor? Or simply a demand will suffice?
- Onus of proof depends on the wording (may not be applicable to on-demand bond. Which party is vested with the onus of proof?
- Requiring a certifier? Why a certifier? Or simply relying on the Employer's first demand?
- Date of the expiry of the bond – usually PC but there are cases of employers/PQs stipulating expiry up to cert. of m.g. defects
- Release of bondsman's obligation either by stipulation of a defined date, or the physical return of the bond to the bondsman

2. Under HKIA standard form of contract, assignment is not permitted unless consent has been made by the other party. Suppose the Contractor has assigned the Contract even if the employer did not give consent. As a developer QS, what can I do? (e.g. Can I terminate the contract?, Can I pay to the assignee under the Contract, Can I stop payment despite the work has been performed well by the assignee?).

- Breach of a term or a condition of the contract? Is this breach a fundamental breach of contract thereby allowing the employer the right to terminate?
- What is the contractual link amongst the parties after the assignment? Is the contract between employer and original contractor still valid?
- Difference from a novation agreement

- Details of the assignment: assignment of rights and obligation in its entirety, or only assignment of rights or obligations only?
 - Why in the standard conditions, there is restriction in the assignment and subletting, notwithstanding subletting is very common in practice? To avoid the employer being construed as contractually liable to the assignee and the sub-let sub-contractors.
3. A latent defect in a shopping arcade is found after completion several years later. Apart from the cost of defect rectification, can a developer recover the loss of rent and/or loss of business by the tenant from the Main Contractor under the contract?
- For negligence actions in respect of latent damages, section 31 of the Limitation Ordinance (Cap 347) provides that a plaintiff has 6 years from the date on which a **cause of action** accrued, or 3 years from the **date of knowledge** (if after) in which to bring an action in tort of negligence.
 - This Section gives an additional protection to a plaintiff for bringing an action within 3 years from the date of knowledge i.e. the date of discovery, that the latent damage has resulted from negligence.
 - This right is however subject to the long stop under Section 32 which provides that no action shall be brought after the expiration of 15 years in any event
 - Whether recovery is only restricted to rectification of the defect(defective product), the economic loss directly consequent to the defect(consequential economic loss under tort), or pure economic loss all touch upon the legal aspects of tort and the employer should be advised to seek legal opinion
4. In a spec and dwg lump sum contract, the contractor's submitted schedule of qtities and rates showed say 1000m² (@ 100/m², despite the fact that the actual requirements from the dwgs should be 1200m². there is a variation to the contract changing the actual requirement to 800m². How should the variation be valued, and what is the correct adjustment to the contract?
- Would quantities form part of the contract (qtities not binding)?
Not in a spec and dwg contract. Where there are qtities provided by the PQS in the tender doc, they are usually qualified as being for

reference only, and the tenderers should be responsible for the accuracy, and at their sole risk if adopted for pricing

- Schedule of Quantities prepared by PQS, could this constitute a misrepresentation/BQ error? It all depends the wording of the tender documents, and usually the PQS will qualify as mentioned above

5. In fast-track type of projects like the casinos in Macau, construction management and management contracting are often used. In deciding between these two types, what considerations should be accounted for from the client/consultants point of view?

- Time : whichever method offering the shortest time to complete will be the prior consideration
- Capability in design
- Availability of expertise knowledge and skill and management
- Can the contract procurement cope with the flexibility in design changes