

TASK:

Individual Discussion Paper:

For each of the topics in Section A and Section B, you are required to write a discussion paper each of not more than 2000 words.

(You can supplement your 2000 words in the main text of the discussion paper with as many materials as you want, and included in Appendix. However, marks will be deducted for exceeding the specified number of words in the main text)

All legal discussions should be supported with authorities.

Unless otherwise stated, the Hong Kong Standard Form of Building Contract (SFBC) shall mean the Agreement & schedule of conditions of building contract for use in Hong Kong: standard form of building contract: private edition - with quantities / [2005 Edition]

### **Section A: (25%)**

This case is concerning about a 300-bedrooms luxury hotel development, where the Employer (E) has contracted the Main Contractor ("M") to construct the project under the HK Standard form Building Contract. For the stone cladding works, the design and installation of all stone works ("the Works") is subcontracted to a nominated subcontractor ("N-1") using the Green Form of the HK Standard form Building Contract, with very heavy liquidated damages imposed. Near the end of the sub-contract period, N-1 realized that the Works is already 2 month late, and disappeared leaving a lot of defects behind. The Main Contractor ("M") wanted to sort out the situation and tried to complete the Works out of good intention. However, after 1 months

trying to complete the sub-contract Works, the MC realized that the Works need a special subcontractor to complete and then notified the Architect for action. It took the Architect 4 months to successfully re-nominate a replacement nominated contractor ("N-2") to complete the remaining work. During the long re-nomination period (it normally should only take about 2 month), some of the stone supporting steelwork had gone rusty which required 15 days and

extra \$1 million to be rectified. N-2 eventually completed the subcontract Works 5 months later than the date for completion originally imposed upon N-1, and incurred an extra cost of \$10 million more than the original contract sum of N-1.

Please discuss with support of legal authorities whether the MC has a contractual claim against the Employer under the Main Contract for extension of time and recovery of loss and expense, and any defective works due to N-1 and N-2.

### **Section B: (25%)**

Following the deciding principles in R. (Ont.) v. Ron Engineering, 1979 CanLII 67 (ON CA) and Envoy Relocation Services Inc. v. Canada (Attorney General) File No. PR-2004-054R, April 26, 2006, discuss with further case reference and literary support the following cases in Hong Kong:-

#### Case 1

A tender for architectural service involved a design competition for the largest community hall among contenders that the winner would be awarded with the consultancy contract. The consultancy was finally awarded to the first-runner up at lowest fee instead.

#### Case 2

A works tender requiring tenderers to submit technical proposal to construct the first cross- harbour bridge that the tenderer scoring highest technical marks would be awarded with the works contract. The works contract was finally awarded to the lowest bidder with technical marks at third highest.

### **Marking Scheme**

<b>Area</b>	<b>Mark in %</b>
Understanding of legal requirements	30
Relevancy and correctness in analysis	25
Logic and analysis	25
Creativity/ Alternative thinking	10
Presentation/writing skill	10