

CONSTRUCTION LAW AND CONTRACT MANAGEMENT (21CVP330)

Semester 2 2021-22

In-Person Exam paper

This examination is to take place in-person at a central University venue under exam conditions. The standard length of time for this paper is **3 hours**.

You will not be able to leave the exam hall for the first 30 or final 15 minutes of your exam. Your invigilator will collect your exam paper when you have finished.

Help during the exam

Invigilators are not able to answer queries about the content of your exam paper. Instead, please make a note of your query in your answer script to be considered during the marking process.

If you feel unwell, please raise your hand so that an invigilator can assist you.

You may use a calculator for this exam. It must comply with the University's Calculator Policy for In-Person exams, in particular that it must not be able to transmit or receive information (e.g. mobile devices and smart watches are **not** allowed).

Answer any **THREE** questions ONLY.

All questions carry equal marks.

Question 1

The agency and certification roles of the Engineer under the FIDIC contract are often in tension. Critically discuss this statement and include in your answer specific references to relevant case law.

[33 marks]

Continues/...

.../continued

Question 2

Your firm has been appointed by the client as cost consultants on a proposed new hotel project. You, as the senior quantity surveyor, have been tasked with advising the client on the tendering and contractor selection process. The client wishes to engage a design and build contractor to develop the designs and undertake the works under the NEC4 Option A contract. The client has directed their design consultants to develop the designs to RIBA Stage 3 before the job is put out to tender. You have pre-qualified six contractors to tender for the project and have sent each of them the invitation to tender documents which included the following stipulations:

- All tenders are to remain open for 12 weeks from the date of submission.
- Tenderers should include a tender deposit of £100,000 which is non-refundable if the tenderer is subsequently requested to execute the contract but does not do so.
- The maximum duration of the contract is 12 months, and the client will entertain proposals from contractors that offer alternative contract durations.
- Delay damages for the construction contract is to be set at the rate of £3,000 per day.
- The basis for contract award is the best value tender, judged based on the tender figure and proposed contract duration.
- The order of cost estimate for the project is £1,500,000 (based on a client cost plan) and tenders with tender figures that fall outside the interval defined by $\pm 10\%$ of this amount will be rejected.
- Any tender whose technical proposal does not receive a satisfactory quality rating (i.e., 80% or higher rating based on the published evaluation criteria) will be rejected.
- All compliant tenders will be considered but that the employer will not be bound to accept the lowest or any tender.

Five of the six contractors you invited to tender submitted tenders and paid the tender deposit of £100,000. You have examined the technical proposals in the five tenders received and have found these to be highly satisfactory and comparable. Table 1 below shows the tender figures and contract durations in the five tenders.

Table 1: Tender Results

Tenderer	Tender Figure (£)	Contract Period (Months)
Beecon Ltd	1,450,000	12
Bildit Ltd	1,510,000	10
Thornbird Ltd	1,540,000	11
Jescaly Ltd	1,575,000	9
Trybuild Ltd	1,685,000	8

- (a) Briefly discuss the criteria you should use to prequalify the contractors to participate in the tender exercise.

[13 marks]

Question 2 continues/...

.../question 2 continued

- (b) Advise the client on the best value, and second-best value tender to consider for contract award. (Note – Assume a 30-day month and provide a commentary to illustrate any calculations you base your advice on.).

[20 marks]

Question 3

This question builds on the tendering scenario in question 2 above.

Four weeks after the tender opening, the preferred tenderer writes to the client stating that they have made a mistake in their tender and have therefore withdrawn their tender. The client writes back to the preferred tenderer enclosing a copy of the contract and requesting them to execute and return it to the client as soon as possible. The contract is neither executed nor returned, so the client decides to award the contract to the second preferred tenderer instead and not to refund the £100,000 tender deposit paid by the preferred tenderer. The preferred tenderer threatens to take the client to court for refusing to return the tender deposit.

Advise the client on the merits of their case in resisting the preferred tenderer's claim that the tender deposit should be returned to them.

[33 marks]

Question 4

The contract sum for the construction of an industrial facility is £5 Million. The form of contract is the NEC4 Option B. The revised programme shows a 4-week delay to regular progress. The contractor notified a compensation event, which has been approved and assessed by the project manager. Table 2 shows the contract details and Table 3, the valuation details for month 10 of the project (Valuation No. 10).

Table 2: Contract Details

<i>Contract Sum Breakdown</i>	
Preliminaries	£250,000
Fixed costs (start), total of	£11,500
Fixed costs (end), total of	£10,500
Time-related costs, total of	£108,000
Value-related costs (start), total of	£120,000
Building works	£4,100,000
External works	£650,000
<i>Contract Terms</i>	
Contract period	12 months
Measurement and assessment interval	Monthly
Retention-free amount	£1,000,000
Retention percentage	5%
Limit of retention	3%
Delay damages per week	£14,000

Question 4 continues/...

.../question 4 continued

Table 3: Valuation No. 10 Details

Permanent works	£3,787,500
Materials onsite	£400,000
Materials offsite	£100,000
Extension of time granted	2 weeks
Additional payment awarded	£90,000
Total of previous payments	£3,750,000

- (a) Determine the price of work done to date. (For simplicity assume there are 4 weeks in a month.) [15 marks]
- (b) Determine the value of retention for Month 10 and explain how you could safeguard retention monies. [12 marks]
- (c) Based on your answers to 4a and 4b above, determine the amount of the payment due the contractor in Month 10. [6 marks]

Question 5

- (a) Construction contracts are instruments of adaptation. Critically discuss this statement. [18 marks]
- (b) Discuss the dispute resolution procedure for a construction contract in the UK under the NEC4 contract. [15 marks]

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