



**THE HONG KONG INSTITUTE OF
SURVEYORS**

Your ref.: (01A5H-01-6) in ETWB(W)510/14/01

**BY FAX & POST
#2801 5034**

13 December 2006

Secretary
Conditions of Contract Sub-Committee
Environment, Transport and Works Bureau
Murray Building, Garden Road,
Hong Kong

Attn: Mr Edward Y W Lee

Dear Sir

**Conditions of Contract Sub-committee
Special Conditions of Contract on
Timely Certification of Claims and VOs**

Reference is made to your letter dated 17 November 2006 on the subject matter. Our observations and comments are as follows:

1. There are 4 additional pages of Special Conditions to the existing Conditions. Is there a better way to reduce the wordings which are talking about the same principle of 28 days for claims + 56 days for assessment?
2. Paragraph numbering "(b)", "(d)", "(e)", "(g)" under sub-clause (1) are missing.
3. According to sub-clause (1)(e), the Engineer will have to determine according to Clause 61 the value of variations within 56 days from the issuance of the variation orders. While Clause 61 gives the Engineer the sole authority, we all know that the Engineer will need the Contractor's submission or at least consult the Contractor before making his determination. How would this time frame be compatible with the time frame for measurement and valuation according to Clause 59(7) needs to be considered?
4. Sub-clause (1) is requesting for submission of full and detailed particulars. While Sub-clause (3) gives the right for the Engineer to request for further information within 7 days of Contractor's submission, what happens if the Engineer does not request within 7 days or the Contractor wants to submit more information after his so called "full and detailed" particulars? Does the Engineer have the authority to consider?

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5. Sub-clause (5) requires the Engineer to determine or ascertain on the basis of information then available. This is a sensible arrangement to avoid the Engineer deferring making determination or ascertainment because of "lack of substantiation", the usual reason and sometimes excuse. On the other hand, the "full and detailed" wordings in sub-clause (1) may better be construed as something for good spirit rather than a condition precedent to determination or ascertainment. Lack of "full and detailed" particulars should not be a ground for deferred action invoking sub-clause (6).
6. It does not appear to deal with time limits for reaching agreement after the Engineer's determination or ascertainment.
7. The principles of the proposed changes should be welcome. At least, some money or time can be ascertained or granted before full agreement. How soon the full agreement can be reached would appear to be and continue to be something for co-operation between the stake holders rather than by contract constraints.

Thank you for your attention.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Raymond Chan', is written over a horizontal line. The signature is stylized and cursive.

Raymond Chan
President