ABSTRACT

The objective of this dissertation is to establish assignment of contract as an alternative to the determination of contractor's employment under the contract when he is in severe financial difficulties. This study is based on projects undertaken using Works 24, the standard conditions of contract used by some public agencies in Singapore such as Public Works Department for the procurement of construction works.

The study finds that determination of the contractor's employment under Works 24, when he is in severe financial difficulties, is a very complicated contractual matter with serious legal and financial implications. Firstly, there are still many uncertainties on the legal issues related to determination such as grounds of determination and the re-possession of site after determination. Determination on the grounds of defaults [Clause 34(a)] is difficult to establish in practice and determination on the grounds of contractor's insolvency [Clause 34(b)] should be avoided as far as possible as its validity is doubtful. Secondly, determination of contractor's employment must be exercised with extreme caution and strict compliance with the procedural requirements set out in Clause 34 and Clause 1(d) must be observed. Failure to comply with such requirements may render the determination wrongful even if the grounds for determination are valid. Thirdly, although Clause 34(d)(i) confers on the government the right to use all materials, temporary buildings, plant and equipment on site to complete the works, this provision is only valid inter partes. It cannot be extended to materials, plant and equipment belonging to the sub-contractors and plant hirers who are third parties to the contract. Fourthly, in the event of determination, the outcome is usually very uncertain. As shown in the case study of the junior college, a long delay and additional costs which may not be fully recovered are usually inevitable. Hence, it is recommended that, wherever possible, determination should be used as a last resort when other means have been exhausted.
On the other hand, assignment of contract has the advantages of simplicity, speed, certainty and minimum delay or additional cost. It is a relatively simple exercise which can be handled by the project team without much legal consultation. It is also faster to execute and the outcomes in terms of delay or any additional cost which may be incurred can be determined immediately. Any delay or additional costs incurred is usually kept to a minimum. From the three case studies, only a short extension of time was granted in one project and no additional cost was incurred in any of the three cases.

Notwithstanding the obvious advantages of assignment of contract, it is not always possible to find an assignee willing to take over the contract at the original contract price. Two conditions must be present i.e. the original contract price must be reasonable and there should be no significant price increase from the tender closing date to the date of request for assignment of contract.

The study also identified the various parties interested in using assignment of contract as an alternative to determination. They are the client i.e. the government, the project team, the contractor, the guarantor, bank and finance company, and other contractors. From the four case studies, it would appear that the government, the guarantor and the finance company have more at stake compared with the project team, the bank and the contractor. It is in their interest that assignment of contract where possible should be initiated early, with the consent of the contractor, to minimise any time loss.

This study concludes that assignment of contract is a practical alternative to determination where circumstances permit.