

From: Andy Walker
Sent: 25 March 2010 12:51
To: Shiraz Sheikh; David Holling
Subject: Fw: Risk Sharing Agreement

[And more....](#)
[Andy](#)

From: McIntosh, Greg <Greg.McIntosh@KPMG.co.uk>
To: Andy Walker
Cc: Joseph Holmes; Foy, Emma <Emma.Foy@KPMG.co.uk>
Sent: Thu Mar 25 12:37:42 2010
Subject: Risk Sharing Agreement

Andy

Looking again at the Agreement I see that there are clauses allowing you to dispute the proposed level of Legal Fees, Employer's Agent Fees and Planning Consultant's Fees, but you have no right to dispute any Pre-Construction Agreement costs. Why is this? I also note that any dispute which is not resolved by a meeting of the Project Manager and the Council's Representative is referred to the joint partnership project team for determination. If this body has equal representation from both parties, what happens if it fails to make a determination? Shouldn't this be referred to some form of independent arbitration? The amounts involved could be significant and the cost of arbitration may be well worth incurring.

You have the power to challenge Disputable Costs, but I cannot see any comparable powers to challenge whether a Triggering Event has taken place. I know that the majority of these Events are not disputable, but any exercise of judgement by the Employer that a Triggering Event has taken place (unacceptable planning conditions being the most obvious - see my previous email) should really be open to challenge and independent resolution procedures if agreement cannot be reached.

You should also be aware that any costs incurred as a consequence of this Agreement being invoked would have to be met from revenue.

Regards

Greg

Greg McIntosh

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