

# APEAS<sub>LTD</sub>

**ARCHITECTS' PROFESSIONAL EXAMINATION AUTHORITY IN SCOTLAND  
Ltd.**

**THE EXAMINATION IN PROFESSIONAL PRACTICE &  
MANAGEMENT: PART 3, 2008/09**

**QUESTIONS for CANDIDATES**  
**All questions should be attempted**

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## QUESTION 1

Provide **bullet point** answers to the following:

- 1.1 Indicate the financial issues that should be considered when setting up a small architectural practice.
- 1.2 Summarise the differences between adjudication and arbitration.
- 1.3 What do you understand by integrated supply chain management in the Construction Industry?
- 1.4 What do you understand by the following in the context of the Planning process:
  - (a) Delegated Powers;
  - (b) Reserved Matters;
  - (c) Outline Planning Consent.

End of Question 1

## QUESTION 2

### Memo

**From:** John Young

**To:** Candidate

We are close to concluding negotiations with Metro Construction and agreeing a final contract sum for Riverside Quay.

The client has had a number of bad experiences of late with contracts running over budget. The bank funding structure for this project is also set up in such a way that any application for extended finance to cover any increase in costs will incur extensive penalties. Consequently the client has intimated that he now wishes to transfer all financial risk to the contractor and has requested that we look into procurement mechanisms to deliver such a framework.

We are 100% through with our production information program with priced Bill of Quantities returned by the contractor for the completed works packages. The client is eager for a site start.

The project QS Mannars Surveyors has suggested that we transfer to a Guaranteed Fixed Price contract which would be incorporated into the standard contract through a schedule of amendments.

Please find attached an e-mail from the QS itemising the proposed changes to the contract.

In our role as Contract Administrators can you make an assessment of the proposed amendments and prepare some notes on the general implications of going down this route. Do you concur with Mannars Surveyors recommendations? I'm concerned that the client may not gain the security he desires and so can you give me your evaluation of where the financial risks may still lie and how these might be addressed?

I have a meeting with the QS and client tomorrow to discuss the above and I want to be able to advise accordingly.

## QUESTION 2 (continued)

### E-mail from project QS to John Young

Hi John

### Guaranteed Fixed Price Lump Sum Contract

In response to our clients stated requirements I would propose that we amend the contract along the following lines.

The contract shall be a Guaranteed Fixed Price Lump sum contract and subject to the provisions of new Clause 5.11 of the conditions of contract inserted by the amendments the contractor guarantees there shall be no increase in the contract Sum for any reason.

The conditions shall be amended as follows:

Clause 5.11

After Clause 5.10 insert new clause: -

“the only variations which will result in an increase to the Contract Sum are those which are instructed by the Architect as a consequence of a change by the Employer to the general design or which are as a result of the proven failure on the part of the Architect or Engineer employed by the Employer to use reasonable skill, diligence and care in respect of services provided by them and which constitute a fundamental and substantial alteration or modification to the design quality of the works”

I have already spoken to the contractor and he seems comfortable with this proposal – he has intimated that he would be looking to charge a non-returnable sum of around £30K to cover the acceptance of risk.

My assessment is that this addition to the contract sum is acceptable and represents good value to the client.

We can discuss further at our meeting tomorrow.

Best regards

End of Question 2

### QUESTION 3

Dear Candidate

I know that you are about to sit your Part 3 Examination. When the issue below came to my attention I thought that that it would be a good one to test your knowledge on code of conduct issues.

My cousin John and his wife have just had to sell their house because the extension designed by his architect has come in three times more expensive than the architect told them when they bought the house. He believes that he has a justifiable claim against his architect. The sequence of events was as follows:

June. 2007 - John finds old mill house in rural situation three miles outside Cityburgh. House was too small for his needs but it seemed suitable for expansion. It had been on the market for some time.

July 2007 - John contacts an architect. This architect is asked to do a quick sketch layout and cost estimate for the additional accommodation that John needed.

August 2007- Architect provides a very nice layout to John that seemed to satisfy his brief. He was advised in writing by the architect that the cost of the extension would have been approximately £80,000. This was for a 100 sqm stone-clad extension and numerous alterations to the kitchen and bathroom.

September 2007 - John buys the house and arranges for architect to start the design process. There was a simple exchange of letters that only stipulated the fee and general scope of services, i.e. planning, building warrant and construction drawings. The fee proposal was caveated to say that the final fee would depend on the construction tender received for the works. A copy of the appointment letter is attached.

November 2007 - John and his wife move into the house.

December 2007 - Planning application is lodged.

January 2008 - Building Warrant application submitted.

February 2008 - Project is put out to tender to three local contractors. The scope of the works has not really changed since the first sketch drawings.

April 2008 - Tenders returned. Lowest tender was £240,000. This was well beyond John's agreed budget and indeed John's ability to pay.

May 2008 - Planning permission is granted, but John is forced to put the house on the market as the house is too small (his wife is three months pregnant). John writes to architect stopping his services.

### QUESTION 3 (continued)

June 2008 - John sells his house. He makes a slight profit as he now has planning permission in place for an extension. John gets an invoice from the architect based on the reduced scope of services but based on the £240,000 tender. This is therefore three times higher than expected.

July 2008 - Architect winds up his practice and starts to work for another practice. He does not take run-off PI Insurance claiming, that as this was his only project and no construction had taken place, there was no need.

My cousin John has only paid a portion of the architect's fee and has now received a letter saying that the architect is just about to put the matter into the hands of his lawyers. John is very disenchanted with the architectural profession but has asked me for some advice about how he should proceed.

Please give this some consideration and prepare a report on this matter. I am particularly interested in how the architect measured up to the various codes of conduct that we have to comply with. If not, what should we do about this? Does the architect have a valid claim for fees? Are there any other issues that my cousin should be aware of – particularly regarding the new owners of the house?

Yours

Duncan Flynn

### QUESTION 3 (continued)

Colin Crooks Architects  
234 Hapless St  
Cityburgh

24<sup>th</sup> Sept 2007

Dear John

#### **Mill House, Cityburgh**

*I am very pleased that you have bought the above house. It has wonderful potential as a unique family home.*

*I am also very pleased that you would like to appoint me as the architect for this development and now confirm my fee proposal.*

*To provide a full design service based on the outline proposals prepared in July 2007. This service will include planning application and preparation of tender and construction information and supervision of the works on site.*

*The fee for this work will be 10.0%.*

*Based on my original cost estimate for the works of £80,000 this will equate to a fee of £8000. However as is quite common on such projects design changes can take place and the final costs may increase slightly. For this reason the 10% fee will be based on the final construction costs.*

*I trust that this is to your satisfaction and look forward to your written confirmation.*

*Yours sincerely*

*Colin Crooks.*

*Architect*

End of Question 3

## QUESTION 4

### Memo

**From:** John Young

**To:** Candidate

I have received from our client's legal representatives their proposed consultancy agreement for Westcliffe House. They have given me the opportunity to make comments prior to formal signing and are looking for a quick response. To progress matters can you review the document and prepare some notes on the associated risks and liabilities to the practice and define what changes you would suggest to reduce our exposure?

I have managed to carry out my own part assessment therefore can you limit your input to the following clauses only:

Clause 1  
Clause 4 and 5  
Clause 8  
Clause 13



**QUESTION 4 (continued)**

**Client  
and  
GFY Architects**

**CONSULTANCY AGREEMENT**

## **QUESTION 4 (continued)**

### AGREEMENT BETWEEN:-

- (1) **Client: Bijou Properties Ltd.**
- (2) **GFY Architects. Geddes House 1 Union Street Cityburgh CB1 9RW**

### **1. OBLIGATIONS OF THE CONSULTANT**

- 1.1 The Consultant shall provide the Services in accordance with the Design Services Programme and in any event with the expedition and diligence to be expected of a competent professional.
- 1.2 The Consultant warrants and undertakes to the Employer that the Consultant has and shall continue to provide the Services exercising the level of skill, care and diligence as would be expected of competent and suitably qualified Architect experienced in carrying out services comparable with the Services and discharging obligations comparable to those herein in relation to projects of a similar size, scope and complexity to the Development. The Consultant shall obtain and have regard to the Employer's budget for the carrying out of the Development in performance of the Services.
- 1.3 The Consultant undertakes that it shall perform the Services in such a way as to comply with all relevant planning permissions, building regulation standards and consents, the DDA, NHBC Rules and Standards and all Legislation. The Consultant shall draw to the attention of the Client any circumstances which touch on or concern the duties of the Client under the CDM Regulations. The Consultant will perform the services in such a way as to ensure that on completion all building components and installations will be deemed fit for purpose.
- 1.4 The Consultant agrees to supply all relevant information documents and reports required to be produced by the Consultant in accordance with the Services in a good and timely manner and so as not to affect the date for completion of the Project.

## QUESTION 4 (continued)

1.5 The Consultant shall have such authority to act on behalf of the Client as is reasonably necessary for the performance of the Services but notwithstanding anything to the contrary contained elsewhere in this Agreement or under the Building Contract the Consultant shall have no authority to act on behalf of the Client in relation to any of the following matters without the Client's prior written approval:

the variation of the design or specification of any work materials and/or goods or the quality or quantity of them as shown or described in the brief to be agreed between the Client and the Consultant as part of the Services and/or the Building Contract;

the issuing of any instruction or the giving of any approval or the making of any agreement or the doing of any other thing pursuant to the appointment of any of the Other Consultants or the Building Contract which would or might delay completion of the Project beyond the date or dates agreed by the Consultant with the Client from time to time or which would or might increase the cost to the Client of the Project.

1.6 The Client may at any reasonable time by notice in writing to the Consultant dispense with modify or amend any of the limitations on the Consultant's authority as reasonably necessary or impose further limitations on the Consultant's authority as reasonably necessary and the Consultant shall immediately be bound by anything contained in such a reasonable notice and shall thereafter perform the Services accordingly.

## **QUESTION 4 (continued)**

### **2. THIRD PARTIES**

2.1 The Consultant shall as and when reasonably requested so to do by the Client provide to any third party having an interest in the Project all such information in regard to the Project as they may from time to time reasonably require.

The Consultant shall within 5 working days of each request of the Client so to do execute as collateral warranty undertaking in accordance with the provisions of the Requirements of Writing (Scotland) Act 1995 in favour of Tenant, Purchaser, Proprietor or Funder and deliver the same to the Client duly executed.

### **3. THE OTHER CONSULTANTS**

The Consultant shall liaise with and shall not impede the Other Consultants in the performance of their obligations and shall co-operate in the co-ordination of the Services with the services of the Other Consultants.

### **4. THE FEE**

The Client shall pay to the Consultant as full remuneration for the performance by him of the Services in accordance with this Agreement the Fee which shall be deemed to be inclusive payment for the Services and for all costs and expenses of every kind incurred by the Consultant in connection therewith.

### **5. METHOD OF PAYMENT**

5.1 The Fee shall be paid by instalments as specified in Appendix A in accordance with the provisions of Clause 0 PROVIDED THAT if in the Client's reasonable opinion the extent of the Services performed by the Consultant at the date on which any such instalment is due do not

## QUESTION 4 (continued)

substantially correspond as a proportion of the whole of the Services as does the instalments of the Fee previously paid by the Client to the Consultant together with the instalment then due to the whole of the Fee the Client shall be entitled to withhold payment of such instalment until the extent of the Services performed does so correspond.

5.2 The Consultant shall submit to the Client accounts from time to time as and when any sums become due to the Consultant under this Agreement (but no more frequently than monthly) showing:

5.2.1 the instalment of the Fee which is then due to the Consultant;

5.2.2 the instalments of the Fee previously paid by the Client to the Consultant; and

5.2.3 any other sums due to the Consultant under this Agreement such sums to be supported by such documents vouchers and receipts as shall be necessary for computing the same or as may be reasonably required by the Client.

5.3 Notwithstanding the requirement for submission of accounts under Clause 5.2 the Client shall, not later than 28 days after the final date for payment of an instalment of the Fee, give written notice to the Consultant:

5.3.1 specifying the amount of the instalment of the Fee made or proposed to be made;

5.3.2 the basis upon which that instalment is calculated; and

where any deduction is made or intended to be made from that instalment, the amount of that deduction and the ground for making the same (appropriately apportioned by amounts where separate deductions are attributable to separate grounds).

## QUESTION 4 (continued)

Subject to any deductions or set-offs which the Client is entitled to make under the terms of this Agreement or otherwise at law the Client shall pay to the Consultant all sums properly due under this Agreement at the end of the calendar month next following the calendar month in which the Consultant's accounts therefore in accordance with Clause 5.2 were received by the Client and which date shall be the final date for payment of any instalments.

### 6. **PROHIBITED MATERIALS**

The Consultant warrants to the Client that he has not specified and shall not specify and has exercised and shall continue to exercise the level of skill, care and diligence specified in Clause 2.3 and consistent with the inspection duties as part of the Consultant's Services to ensure that there are not used in connection with the Project any material, substance, product, building practice, technique process or combination of any of the same or any other substances not in accordance with British or European Standards or Codes of Practice or NHBC Standards and where in the case of British or European Standards or Codes of Practice or NHBC Standards there is a range of equivalent standard, items which are not in accordance with such other equivalent standards or any identified as deleterious, unsatisfactory or unsuitable in the relevant circumstances in the Guidance "Good Practice in Selection of Construction Materials" dated 16 May 1997 sponsored by the British Property Federation and British Council of Offices as amended from time to time or other substances, materials, products, techniques or methods generally known to members of the Consultant's profession to be deleterious at the time of specification or

## **QUESTION 4 (continued)**

incorporation in the Project including but not limited to substances, materials, products, techniques or methods which have been publicised in the Building Research Establishment Digest as amended from time to time as being deleterious to health and safety or to the durability of property in the circumstances in which they are used.

### **7. COPYRIGHT AND CONFIDENTIALITY**

The copyright in the Copyright Materials shall remain vested in the Consultant but the Client shall have an irrevocable royalty-free non-exclusive licence to copy and use such documents and materials for any purpose related to the Project including but without limitation the construction completion maintenance letting promotion advertisement extension reinstatement and repair of the Project. The Consultant shall not be liable for any such use by the Client of any documents for any purpose other than that for which the same were prepared and provided by the Consultant. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties.

### **8. INSURANCE**

8.1 Without prejudice to his obligations under this Agreement or otherwise at law the Consultant shall maintain professional indemnity insurance for the Indemnity Limit for a period of 15 years from the date of practical completion of the Project pursuant to the Building Contract provided always that such insurance is available at commercially reasonable rates. The Indemnity Limit is £5,000,000.00 for any occurrence or series of occurrences arising out of any one event.

## QUESTION 4 (continued)

- 8.2 If insurance cover as required by Clause 8.1 ceases to be generally available in the UK insurance market the Consultant shall effect such appropriate insurance as is available as the Client shall approve (such approval not to be unreasonably withheld).
- 8.3 The insurance referred to in Clause 8.1 shall be upon terms generally available in the market without onerous or unusual conditions or excess and with a well established insurance office or underwriter of repute operating in the UK insurance market. As and when he is reasonably requested to do so by the Client the Consultant shall produce for inspection documentary evidence that his professional indemnity insurance is being properly maintained.

### 9. **TERMINATION OF CONSULTANT'S ENGAGEMENT**

- 9.1 The Client may in addition to any other rights and remedies which he may have by notice in writing to the Consultant forthwith terminate the Consultant's engagement under this Agreement whether or not the Consultant is in default hereunder provided that the Client shall pay to the Consultant any reasonable costs, expenses or losses including loss of profit properly incurred by the Consultant up to and including the date of termination.

The Client may at any time by notice in writing to the Consultant forthwith require the Consultant to suspend performance of the Services. If the Client shall not have required the Consultant to resume performance of the Services within a period of 12 months from the date of such notice then the Consultant may thereafter forthwith terminate the Consultant's engagement under this Agreement by notice in writing to the Client.



## **QUESTION 4 (continued)**

In any case in which the Client has required the Consultant to suspend the Services the Client may at any time within a period of 12 months from the date of such notice require the Consultant in writing to resume the performance of the Services. In such event the Consultant shall as soon as reasonably practicable resume the performance of the Services and any payment made previously under this Agreement shall rank as payment on account towards the payments to be made to the Consultant under this Agreement.

### **10. ASSIGNMENT AND SUB-LETTING**

The benefit of this Agreement shall inure for the benefit of the successors in title of the Client without the need for an express assignment and without prejudice to the foregoing the Consultant's consent shall not be required in the case of any assignment or transfer by the Client of all or any of the Client's rights and obligations arising out of or under this Agreement to any third party. For the avoidance of doubt, this Agreement may not be assigned more than four times.

### **11. MISCELLANEOUS**

The limitation period under this Agreement expires on the date 12 years following the date of Practical Completion of the Project provided always that any written claims made thereunder before that date shall subsist beyond that date.

### **12. LAW AND DISPUTES**

12.1 The construction validity and performance of this Agreement shall be governed by and in accordance with Scots Law.

## QUESTION 4 (continued)

Any dispute or differences arising out of this Agreement may be referred to and settled by an independent person (“the adjudicator”) the appointment of whom the parties will use reasonable endeavours to agree within 3 working days after either party has given to the other a written request to concur in the appointment of such a person. Failing agreement within that period, the dispute or difference may be referred to some independent and fit person to be nominated by the Chairman for the time being of the Scottish Branch of the Chartered Institute of Arbitrators (Arbiters) (or his deputy) within seven days of the application of either of the parties hereto.

### 13. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes and replaces any previous agreements, arrangements or understandings between the parties in respect of the Services, Project and/or Site. The parties confirm that the terms of this Agreement may be varied or modified only by an agreement duly executed by the parties in accordance with the provisions of Section 3 of the Requirements of Writing (Scotland) Act 1995.

End of Question 4

## QUESTION 5

The Contracts Manager at The All Saints Residential Conversion project in Cityburgh called to advise that a Health & Safety Inspector carried out an apparently random safety inspection this morning and has closed the site. The contractor thinks that this might be a consequence of the reportable incident last week when a demolition worker fell, broke a leg and suffered extensive head injuries. The Inspector apparently spent a lot of time inspecting the demolition works at Block B and has confirmed to the contractor that the demolition contractors Method Statement is inadequate and he is contravening the Work at Height Regulations.

He is also unhappy about finding “some suspicious looking material” at the demolition works and has requested a copy of the Asbestos Report.

Our client Cityburgh Preservation Trust appointed themselves as CDM Co-ordinator in this job to save additional fees (against the advice of John Young) and I am concerned about the adequacy of the Pre-Construction Information. Additionally in the rush to get on site quickly it appears that the client only carried out a type 1 (non disruptive) asbestos survey whilst Block B was still occupied by the previous owner, the results of which were inconclusive.

Paul Rybatt of Cityburgh Preservation Trust has been on to me in a panic, is looking for advice, and wishes to see me on Wednesday at 10.30am.

Can you please prepare an advisory memo for me for this meeting; I need to be clear on the responsibilities of all parties regarding not only the implications of the accident in relation to the Health and Safety Act, but also the implications for the Pre-Construction Phase Information and the Construction Phase Health & Safety Plan.

I also need briefed on the Asbestos situation, e.g. whether any relevant legislation has been breached, and if asbestos has been found, the procedures we require to go through to remove it.

Clearly the contract has already been delayed due to the site closure. Do you think the asbestos problem will result in further delay? – what are the contractual implications?

End of Question 5

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## QUESTION 6

Dear Candidate,

As you know our new office building for Cityburgh Council is on site. During a site visit last Friday with the Client's Clerk of Works I was horrified to discover that the damp proof course around the pile caps has not been joined to the damp proof course under the floor slab and, as a result, ground water is permeating up into the structure.

I have looked at the details and it would seem that neither our drawings nor those of the structural engineers detail this junction properly. Indeed when I spoke to Trevor Maillot, the structural engineer responsible, he claims that he never takes responsibility for this type of waterproofing and that the architect is usually responsible. I was under the impression that the Structural Engineer always took responsibility for this.

I understand that on a previous job you had experience on such an issue and I would like you to prepare a report on where we go from here and advise on the contractual and insurance issues around this problem.

Please add two paragraphs identifying other areas in building design where this could happen and how similar issues could be avoided in future.

Duncan

End of Question 6

.....20.....

## QUESTION 7

### Memo

**From:** Miriam

**To:** Candidate

**Date:** 1 December 2008

During his site inspection yesterday, Peter observed that the double-glazing units for the curtain walling have been delivered, but are all clear glass. Our elevation drawings have always stated grey tinted glass. I recall that the use of tinted glass is vital to control solar gains, avoiding overload of the air-conditioning system.

Peter has reviewed the glazing subcontractor's fabrication drawings. They specify the glass as clear. The drawings appear to have been checked by you and marked "Approved", along with your signature.

The subcontractor says that to replace the clear glass double-glazing units with tinted would cost around £57,000. There would also be a 4-week delay in replacing the glass and the main contractor has indicated that he will claim for an appropriate extension of the contract period.

Please can you give me a report, advising:

- a. Who carries responsibility for this?
- b. If an extension of the contract period would be justified;
- c. How we should overcome this problem;
- d. How we should deal with drawing "approvals" in future.

Please can you let me have this by Friday, so that we can act without delay.

Thanks,

Miriam.

End of Question 7

.....21.....

## QUESTION 8

### Memo

**From:** John

**To:** Candidate

A long-time friend, Jonathan Smith, has contacted me. Jonathan is a successful businessman and he has recently bought Dean Mill in Newtonriggs. He knows about our multi-award winning conversion of Underbarrow Mill and would encourage us to bid for his project but he wants to test the market by inviting fee submissions from a number of architects. What he has asked for initially is advice about the information he should make available and the questions he should ask to ensure that he receives complete and comparable fee proposals.

Dean Mill is on four floors with cast iron columns, brick vaults and a footprint of 60 x 15m. It is half a mile from the centre of Newtonriggs and suggested uses include housing, which could be for sale or rent (it might be possible to interest Newtonriggs Housing Association in the project), business start up units, offices, artist's studios, café/bar etc. Dean Mill is listed as of national importance but was abandoned as a working mill five years ago. The building needs extensive repairs to the exterior, including re-roofing and stone repairs. Jonathan is hopeful that he would be able to get grant aid for repairs to the external shell. He thinks that the works might cost £3.5m in total, of which £1m might be external repairs.

Since you are doing your Part 3 it would be a good exercise for you to draft a letter to Jonathan Smith, identifying key information that architects need to know to prepare a competent fee proposal. Jonathan will want to know how architects work out their fee requirement, how the scope of service can be defined and whether the procurement route is significant to the fee bid. He is looking for advice on the other team members that would be involved and what the implications are for him if he asks the architect to appoint them directly. He is not only interested in cost. He wonders how he can strike a balance between cost and quality and how to find out the experience and approach of different practices.

I do not want you to work out the actual fee that JFY would charge. The issue for the moment is to advise him about how fees are worked out and how a competitive process can help him find the right architect for his project.

End of Question 8

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## QUESTION 9

### Memo

**From:** Jill Khan

**To:** Candidate

We have just received a claim letter from the contractor on the council office project. Could you have a look at this. The actual sequence of events seems to be accurate enough but I am not sure as to the contractual entitlement in each case. The council is keen to get this settled as soon as possible – can we make an Extension of Time award based on this information? This is quite complex to answer so it would help if you could chart out the timing of all the events.

Could you also let me know your thoughts on the validity of the Loss and Expense claims? It seems to me that they may have been due something even if the glazing contractor had not become insolvent.

## QUESTION 9 (continued)

Dear Sirs,

### Cityburgh Council Offices

In accordance with clause 2.27.2 of the contract conditions we write to inform you of delays to the project caused by the following:

Restrictions on working. For a period of 10 weeks we were forbidden to work in the east half of the site for two days in each week to avoid disturbing council meetings. This has inevitably delayed the works for 20 days.

Insolvency of the **instructed** glazing contractor A&B Glazing. This is clearly a Relevant Event under Clause 2.29.1 (compliance with instruction) of the Contract Conditions.

It is a matter of record that we were instructed to employ A&B as sub-contractors in accordance with their quotation. The changes to the scope of the works delayed the start of phase 1 of their work for six months, but after that it went well. Following completion of Phase 1, 18 months into the contract, however, further additions to the scope of work meant that we were unable to instruct phase 2 immediately. At this point the glazing contractor, A&B Glazing, went into liquidation.

The original value of the remaining phase of the work was £900,000, and its programmed duration 9 months. Due to the requirement to gain approval from Historic Scotland it took 3 months to identify and appoint a replacement contractor, and a further 2 months for them to start on site due to the specialised nature of the windows to be produced. The window work was completed in the 9 months programmed, and the subsequent finishing work also completed in the 2 months allowed.

It is clear from the above that due to the insolvency of the **instructed** glazing contractor it was impossible for us to complete the contract works before the end of month 30 and we therefore ask that a new completion date be set which fairly reflects this.

We also give notification that we require to be reimbursed for Direct Loss and Expense in respect of this occurrence which is a Matter under Clause 4.24.1 of the contract conditions. The major portion of this is the fact that the new contractor, Metal Glazing Ltd, charged £1.15m for the basic phase 2 work instead of the original £900,000.

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**QUESTION 9 (continued)**

It is also our contention that the effect of the delay to the instruction of Phase 2 of the work gives rise to an entitlement to Direct Loss and Expense in connection with the glazing which has not, to date, been taken into account.

We look forward to hearing from you

Yours faithfully

Able Construction

End of Question 9

## QUESTION 10

### Memo

**From:** Jill Khan  
**To:** Candidate

I have had a call from the project manager for the River Centre project. As you know, this project was funded by both the Heritage Lottery Fund and the Scottish Arts Council. Apparently the last tranche of Arts Council funding (totalling some £50,000) is dependant on the Final Certificate being issued before the end of the financial year on 6 April. As it is now mid March the PM is requesting that we issue a Final Certificate without delay. He feels that as the building has been occupied for over a year there should be no obstacle to this.

I am a little concerned about this, so could you do some research and draw up a paper outlining what the implications of his request are? First of all could you just remind me of all the effects of issuing the Final Certificate. Bearing in mind the impecunious nature of the centre and the devastating effect that the loss of this funding would have on their continued existence, you should explore every avenue to see if we can comply.

Regards

Jill

End of Question 10  
**END OF PAPER**