

RULES FOR THE EXPERT DETERMINATION PROCESS

&

CODE OF CONDUCT FOR AN EXPERT

(A) RULES FOR THE EXPERT DETERMINATION PROCESS

1. COMMENCEMENT

The expert determination process ("Process") commences with the acceptance by the Expert of the appointment to act to determine the dispute or difference in accordance with these Rules and the Code of Conduct for an Expert.

2. WRITTEN SUBMISSIONS

2.1 Initial statement and submissions

Within 14 days after the date of commencement of the Process, the Contractor must provide to the Principal or the Principal's nominee and the Expert a statement of the dispute or difference, any agreed statement of facts and a written submission on the dispute or difference in support of the Contractor's contention.

2.2 Response

Within 21 days after receipt of the Contractor's statement and written submission, the Principal or the Principal's nominee must provide to the Contractor and the Expert a written response to the written submission of the Contractor.

2.3 Contractor's opportunity to respond

If, upon the application of the Contractor, the Expert considers it appropriate, the Contractor may make a written response to the response of the Principal under rule 2.2 within the time allowed by the Expert and a copy of the written response must be provided by the Contractor to the Principal.

2.4 Principal may respond if Expert allows

If, upon the application of the Principal, the Expert considers it appropriate, the Principal may make a written response to the response of the Contractor under rule 2.3 within the time allowed by the Expert and a copy of the written response must be provided by the Principal to the Contractor.

2.5 Further information

If the Expert decides further information or documentation is required for the determination of the dispute or difference, the Expert may:-

- (a) require a further written submission or documents from either or both parties, giving each party a reasonable opportunity to make a written response to the other's submission; and
- (b) call a conference between the parties and the Expert in accordance with rule 3.

3. CONFERENCE

3.1 Expert to organise

When the Expert determines that a conference between the parties is necessary, the Expert is responsible for arranging the conference at a venue and time convenient for the parties and must notify them accordingly.

3.2 Expert to notify matters to be addressed

At least 7 days prior to the conference, the Expert must inform the parties of the matters to be addressed at the conference.

3.3 Make representations

At the time and place notified for any conference, the parties must appear before the expert to make representations on the matters the subject of the conference.

3.4 Rules of evidence do not apply

The Expert in conducting the conference is not bound by the rules of evidence.

3.5 Representation approved

At a conference either party may have legal or other representation.

3.6 Conference private

The conference will be held in private.

3.7 Transcripts

Transcripts of the conference proceedings will be taken and be available to the Expert and the parties if so required by either party.

3.8 Confidentiality

All proceedings and submissions relating to the Process are confidential between the parties and the Expert and must be kept confidential. A party may not divulge information to any third party, at any time or in any circumstances except with the prior written consent of the parties or as may be required by law or in order to enforce the determination of the Expert.

4. THE DETERMINATION

4.1 Time for determination

As expeditiously as possible after the receipt of the submissions or after any conference and, in any event not later than three months after the commencement of the Process unless the time has been extended by agreement between the parties, the Expert must determine the dispute or difference between the parties and notify its or her determination in writing to the parties. The Expert must give a brief statement of its or her reasons for the determination to the parties.

4.2 Errors in determination

Where the determination made by the Expert contains:-

- (a) a clerical mistake;
- (b) an error arising from an accidental slip or omission;
- (c) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
- (d) a defect of form,

the Expert must correct the determination.

5. TERMINATION

5.1 Expiry

Subject to paragraph 4.2, the Process concludes when the Expert has notified a determination to the parties.

5.2 Early termination

The Process will be terminated in the event of the Expert being unable to conclude the Process by reason of illness, death, being of unsound mind or failure to act and in that event, the provisions of the Contract relating to the determination of disputes or differences by an Expert will reapply.

6. COSTS

6.1 Sharing of costs

Each party bears its own costs of the Process and must share equally the costs of the Expert and the Process.

6.2 Security for costs

Security for costs must be deposited by both parties at the commencement of the Process if the Expert so directs.

6.3 Costs on early termination

Where the Process is terminated prior to the determination of the dispute or difference, each party bears its own costs of the Process so far. The costs of the Expert and of the Process must be borne equally by the parties.

7. MODIFICATION

Unless otherwise stated, these Rules may be modified only by agreement of the parties and of the Expert.

(B) CODE OF CONDUCT FOR AN EXPERT

1. The function of the Expert is to make a determination on the dispute or difference in accordance with the Rules, this Code of Conduct, and the letter of appointment of the Expert.
2. The Expert will receive the written submissions and responses of the parties in accordance with the procedures specified in the Rules and may require any further information or documentation from the parties the Expert thinks is necessary for the determination of the dispute or difference in accordance with the procedures specified in the Rules.
3. The Expert will decide whether a conference between the parties and the Expert is necessary for receiving further information on any specified matter(s). If a conference is thought to be necessary, the Expert must inform the parties of the precise subject matter(s) of the hearing and may only hear representations on these matter(s).
4. The Expert is not bound by the rules of evidence and may receive information at any conference in any manner the Expert thinks fit, as long as the requirements of procedural fairness are met at all times.
5. The Expert must disclose all information and documents received from either party to the other party. Where a party fails to make a written submission or appear at any conference after having received due notice, the Expert may proceed with the Process. Except as provided above, no consultation will take place other than in the presence of both parties.
6. The Expert will reach its or her determination on the basis of the information received from the parties and on the basis of its or her own expertise. The decision must be reached as an expert and not as an arbitrator. The Expert's determination must be made as expeditiously as possible and in any event no later than three months after the commencement of the Process, unless the time is extended by agreement between the parties. The determination and a brief statement of the reasons for the determination, signed by the Expert, must be notified to the parties in writing immediately upon the determination being made.
7. The Expert must respect the confidentiality of all information received either through written submissions or oral proceedings. Information acquired through the Process may not be divulged to any other body except with the prior written consent of the parties.
8. If the Expert becomes aware of any circumstances that might reasonably be considered to affect adversely its or her capacity to act independently or impartially, the Expert must inform the parties immediately. The Expert must in those circumstances terminate the proceedings, unless the parties agree otherwise.