

Dispute Resolution - Section 1750

Subsection Topic

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Notwithstanding any other processes available to the Parties, including anything in the General Provisions, the parties shall use the following Dispute resolution process.

Notwithstanding this Dispute resolution process, including any proceedings thereunder, any proceedings in the Courts must be commenced within the time limits set forth in *The Limitations Act*, Chapter L-16.1 of The Statutes of Saskatchewan, 2004, as amended.

The parties must each consult their own legal counsel for advice related to the meaning and operation of *The Limitations Act*.

1 DEFINITIONS

- 1.1 A Dispute is a disagreement between the Contractor and the Ministry (a 'Party' or collectively the 'Parties') concerning the Contract.
- 1.2 The Lowest Level of Management is a person(s) directly involved in the project who has a level of authority below the Party representative identified in subsection 4.4. Specific personnel shall be identified at the pre-construction meeting and thereafter as required.
- 1.3 A Senior Executive Officer is a person(s) who has a level of authority above the Party representative identified in subsection 4.4. Specific personnel shall be identified at the pre-construction meeting and thereafter as required.

2 PRELIMINARY NOTICE

2.1 A Party shall serve written notice within 14 days of the date that it knew of issue(s) or event(s) that may form the basis of a Dispute, to the appropriate representative of the other Party.

2.1.1 Notice shall be provided by letter or email and include contract number, description of issue or events, including date(s), place(s) and names of key persons with knowledge of the matter.

2.2 A Party must provide written preliminary notice as per subsection 2.1 before proceeding to subsequent steps in the Dispute resolution process. Failure to do so may be a complete bar to proceed to the next steps in the Dispute resolution process.

3 LOWEST LEVEL OF MANAGEMENT

3.1 The Parties shall make *bona fide* efforts to resolve all Disputes for which a written notice was given pursuant to subsection 2.1, by amicable negotiations at the Lowest Level of Management, before engaging the Dispute resolution processes described in subsection(s) 4.1 to 6.2.9.

4 NEXT LEVEL OF MANAGEMENT

4.1 If the Parties are unable to resolve a Dispute at the Lowest Level of Management pursuant to subsection 3.1, either Party may deliver a written notice of Dispute (“Notice of Dispute”), including contract number, detailed information of the issues/events in Dispute, relevant provisions of the Contract, remedy or resolution sought by the Party, and an authorized signature of the issuing Party.

4.2 The Notice of Dispute must be served on the other Party within 12 months of the date on which the preliminary notice was served as per subsection 2.1.

4.3 Failure to serve a Notice of Dispute within the timelines as described in subsection 4.2, may be a complete bar to proceed to the next steps in the Dispute resolution process.

4.4 The Notice of Dispute shall be delivered by email or courier to the other Party representative as identified:

4.4.1 by the Ministry in the contract acceptance letter; and

- 4.4.2 by the Contractor in the information provided to the Ministry as requested in the contract acceptance letter.
- 4.5 The Parties' representatives shall make all reasonable efforts, including at least one mandatory face to face meeting, to resolve the Dispute.

5 SENIOR EXECUTIVE OFFICERS

- 5.1 If the Parties are unable to resolve the Dispute within 90 days from the delivery date of the Notice of Dispute, the Dispute shall be referred to the Parties' Senior Executive Officers who shall promptly and diligently make all reasonable bona fide efforts to resolve the Dispute.

6 MEDIATION AND COURT

- 6.1 If the Dispute cannot be resolved within 30 days by the Parties' Senior Executive Officers, the Parties shall proceed as follows:
 - 6.1.1 proceed to mediation if both Parties agree;
 - 6.1.2 commence an action in the Court of King's Bench for Saskatchewan and forthwith provide written notification of the action to the other Party; or
 - 6.1.3 withdraw the Notice of Dispute.
- 6.2 The following shall apply when a Dispute proceeds to mediation:
 - 6.2.1 The mediator shall be a person who has demonstrated that he or she has the experience and expertise required to carry out the responsibilities and duties of a mediator.
 - 6.2.2 If the Parties are unable to agree on the selection of a mutually acceptable mediator, either Party may apply to the Court of King's Bench requesting that a mediator be appointed.
 - 6.2.3 The Parties will act in good faith and attend the mediation with authorized representatives with sufficient authority to resolve the Dispute.
 - 6.2.4 Unless the Parties agree otherwise in writing, the mediator shall hear and determine the issue of liability before proceeding to hear and determine the issue of damages or other relief.
 - 6.2.5 The Parties shall share the cost of the mediator equally.

- 6.2.6 Each Party shall be responsible for its own costs related to the mediation.
- 6.2.7 The Parties waive their right to pursue a claim of any kind against the mediator, including but not limited to actions through the Courts.
- 6.2.8 The place of mediation or any legal proceedings shall be the City of Regina, Saskatchewan, unless the Parties agree otherwise in writing.
- 6.2.9 If the Parties cannot resolve the Dispute through mediation, the Parties may agree to use the same mediator to provide a determination that will be final and binding on both Parties, and will not be subject to appeal, judicial review or any other process. In such case, both Parties expressly waive all rights of appeal or judicial review in connection with the mediator's determination.

7 OTHER

- 7.1 The Parties shall continue to perform their obligations under the Contract while any matter is in Dispute.
- 7.2 For clarity and certainty, this Dispute resolution process is different from the Contractor Performance Evaluation process or the associated Contractor Performance Evaluation Challenge Process.
- 7.3 To facilitate the resolution of the Dispute, any proceedings pursuant to subsection(s) 4.1 to 5.1 shall be on a without prejudice basis.