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## Appendix 11

# Civil Engineering Contractors Association Sub-contract for use with ICE 6th Edition Main Contract

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### Disputes

18. (1) If any dispute or difference shall arise between the Contractor and the Sub-Contractor in connection with or arising out of the Sub-Contract, or the carrying out of the Sub-Contract Works (excluding a dispute concerning VAT but including a dispute as to any act or omission of the Engineer) whether arising during the progress of the Sub-Contract Works or after their completion it shall be settled in accordance with the following provisions.
- (2) (a) Where the Sub-Contractor seeks to make a submission that payment is due of any amount exceeding the amount determined by the Contractor as due to the Sub-Contractor, or that any act, decision, opinion, instruction or direction of the Contractor or any other matter arising under the Sub-Contract is unsatisfactory, the Sub-Contractor shall so notify the Contractor in writing, stating the grounds for such submission in sufficient detail for the Contractor to understand and consider the Sub-Contractor's submission.
- (b) Where in the opinion of the Contractor such a submission gives rise to a matter of dissatisfaction under the Main Contract, the Contractor shall so notify the Sub-Contractor in writing as soon as possible. In that event, the Contractor shall pursue the matter of dissatisfaction under the Main Contract promptly and shall keep the Sub-Contractor fully informed in writing of progress. The Sub-Contractor shall promptly provide such information and attend such meetings in connection with the matter of dissatisfaction as the Contractor may request. The Contractor and the Sub-Contractor agree that no such submission shall constitute nor be said to give rise to a dispute under the Sub-Contract unless and until the Contractor has had the time and opportunity to refer the matter of dissatisfaction to the Engineer under the Main Contract and either the Engineer has given his decision or the time for the giving of a decision by the Engineer has expired.
- (3) (a) The Contractor or the Sub-Contractor may at any time before service of a Notice to Refer to arbitration under sub-clause 18(7) by notice in writing seek the agreement of the other for the dispute to be considered under the Institution of Civil Engineers' Conciliation Procedure (1994) or any amendment or modification thereof being in force at the date of such notice.
- (b) If the other party agrees to this procedure any recommendation of the conciliator shall be deemed to have been accepted as finally determining the dispute by agreement so that the matter is no longer in dispute unless a Notice of Adjudication under sub-clause 18(4) or a Notice to Refer to arbitration under sub-clause 18(7) is served within 28 days of receipt by the dissenting party of the conciliator's recommendation.
- (4) (a) The Contractor and the Sub-Contractor each has the right to refer any dispute under the Sub-Contract for adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of his intention to refer the dispute to adjudication. The Notice of Adjudication and the appointment of the adjudicator shall,

save as provided under sub-clause 18(10)(b), be as provided at paragraphs 2 and 3 of the Institution of Civil Engineers' Adjudication Procedure (1997). Any dispute referred to adjudication shall be conducted in accordance with the Institution of Civil Engineers' Adjudication Procedure (1997) or any amendment or modification thereof being in force at the time of the appointment of the adjudicator.

- (b) Unless the adjudicator has already been appointed he is to be appointed by a timetable with the object of securing his appointment and referral of the dispute to him within 7 days of such notice.
  - (c) The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties after the dispute has been referred.
  - (d) The adjudicator may extend the period of 28 days by up to 14 days with the consent of the party by whom the dispute was referred.
  - (e) The adjudicator shall act impartially.
  - (f) The adjudicator may take the initiative in ascertaining the facts and the law.
- (5) The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings or by arbitration (if the Sub-Contract provides for arbitration or the parties otherwise agree to arbitration).
- (6) The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith and any employee or agent of the adjudicator shall similarly not be liable.
- (7) (a) All disputes arising under or in connection with the Sub-Contract, other than failure to give effect to a decision of an adjudicator, shall be finally determined by reference to arbitration. The party seeking arbitration shall serve on the other party a notice in writing (called the Notice to Refer) to refer the dispute to arbitration.
- (b) Where an adjudicator has given a decision under sub-clause 18(4) in respect of the particular dispute the Notice to Refer must be served within three months of the giving of the decision, otherwise it shall be final as well as binding.
- (c) The date upon which the Notice to Refer is served shall be regarded as the date upon which the arbitral proceedings are commenced.
- (8) (a) The arbitrator shall be a person appointed by agreement of the parties.
- (b) If the parties fail to appoint an arbitrator within 28 days of either party serving on the other party a notice in writing (hereinafter called the Notice to Concur) to concur in the appointment of an arbitrator the dispute shall be referred to a person to be appointed on the application of either party by the President for the time being of the Institution of Civil Engineers.
- (c) If an arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the parties do not within one month of the vacancy arising fill the vacancy then either party may apply to the President for the time being of the Institution of Civil Engineers to appoint another arbitrator to fill the vacancy.
- (d) In any case where the President for the time being of the Institution of Civil Engineers is not able to exercise the functions conferred on him by this Clause the said functions shall be exercised on his behalf by a Vice-President for the time being of the said Institution.
- (9) (a) Any reference to arbitration under this Clause shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force. The reference shall be conducted in accordance with the procedure set out in the Second Schedule or any amendment or modification thereof being in force at the time of the appointment of the arbitrator. In the event of any inconsistency between the procedure set out in the Second Schedule and this Clause, this Clause shall prevail.
- (b) Neither party shall be limited in the arbitration to evidence or argument put to any adjudicator pursuant to sub-clause 18(4).

- (c) The award of the arbitrator shall be binding on the parties.
  - (d) Unless the parties otherwise agree in writing any reference to arbitration may proceed notwithstanding that the Sub-Contract Works are not then complete or alleged to be complete.
  - (e) The arbitrator shall have full power to open up, review and revise any decision, opinion, instruction, direction or valuation of the Contractor or an adjudicator.
- (10) (a) If, when a dispute in connection with the Main Contract (hereinafter called a Main Contract Dispute) is referred to a conciliator or an adjudicator under the Main Contract, and the Contractor is of the opinion that the Main Contract Dispute has any connection with the Sub-Contract Works then the Contractor may by notice in writing require that the Sub-Contractor shall as soon as is practicable provide such information and attend such meetings in connection with the Main Contract Dispute as the Contractor may request.
- (b) If a Main Contract Dispute has been referred to conciliation or adjudication under the Main Contract and the Contractor is of the opinion that the Main Contract Dispute has any connection with a dispute which is to be (but has not yet been) referred for conciliation or adjudication under this Sub-Contract (hereinafter called a Connected Dispute), the Contractor may by notice in writing require that the Connected Dispute be referred to the conciliator or adjudicator to whom the Main Contract Dispute has been referred.
- (c) If the Contractor is of the opinion that a Main Contract Dispute has any connection with a dispute in connection with the Sub-Contract (hereinafter called a Related Sub-Contract Dispute) and the Main Contract Dispute is referred to an arbitrator under the Main Contract, the Contractor may by notice in writing require that the Sub-Contractor provide such information and attend such meetings in connection with the Main Contract Dispute as the Contractor may request. The Contractor may also by notice in writing require that any Related Sub-Contract Dispute be dealt with jointly with the Main Contract Dispute and in like manner. In connection with any Related Sub-Contract Dispute the Sub-Contractor shall be bound in like manner as the Contractor by any award by an arbitrator in relation to the Main Contract Dispute.
- (d) If a dispute arises under or in connection with the Sub-Contract (hereinafter called a Sub-Contract Dispute) and the Contractor is of the opinion that the Sub-Contract Dispute raises a matter or has any connection with a matter which the Contractor wishes to refer to arbitration under the Main Contract, the Contractor may by notice in writing require that the Sub-Contract Dispute be finally determined jointly with any arbitration to be commenced in accordance with the Main Contract. In connection with the Sub-Contract Dispute, the Sub-Contractor shall be bound in like manner as the Contractor by any award by an arbitrator concerning the matter referred to arbitration under the Main Contract.
- (11) All matters and information placed before a conciliator pursuant to a reference under sub-clause 18(3) shall be deemed to be submitted to him without prejudice and the conciliator shall not be called as witness by the parties or anyone claiming through them in connection with any adjudication, arbitration or other legal proceedings arising out of or connected with any matter so referred to him.