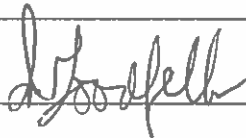


Alternate Dispute Resolution Procedure

Category: Finance Division	Policy: FIN-F18-013
Effective Date: October 24, 2016	Revision Date: June 15, 2017
Supersedes:	Coverage: All Town Departments
Reviewed by: Manager of Procurement	Approved by: Director of Finance/Treasurer
Authorized Signature: 	

Procedure Statement

The Town is committed to following open, fair and transparent Procurement processes and in doing so has created a procedure for the resolution of any dispute, controversy or claim with a Contractor arising out of, or in connection with a Contract with the Town.

Scope

This procedure applies to all employees of the Town, members of Council and any Contractor engaged in a Contract with the Town.

Purpose

This procedure establishes an Alternate Dispute Resolution (“ADR”) process under section 14 of the Procurement Policy FIN-F18-001 (“the “Procurement Policy”).

The purpose of this procedure is to facilitate resolution of disputes in a timely, efficient and cost-effective manner.

Disputes arising between a Bidder and the Town with regards to a Procurement process will be handled through the Town’s Procurement Protest Procedure, FIN-F18-014, as amended.

Definitions

All capitalized terms used in this procedure shall have the meaning given to them in the Procurement Policy, unless otherwise defined in this procedure.

“Contractor” means a Vendor to whom a Contract is awarded and is responsible for the undertaking of the Deliverables under the terms of the Contract.

Roles and Responsibilities

1. Procurement Division

It is the role of the Procurement Division to:

- a. receive and issue notices of disputes;
- b. act as liaison between the Town and the Contractor;
- c. schedule and facilitate all meetings pertaining to the dispute; and
- d. ensure this procedure is followed in a consistent and fair manner.

2. Project Manager

It is the role of the Project Manager to:

- a. engage in initial discussions with the Contractor in an effort to resolve some or all matters related to the dispute without the need for a formal process;
- b. respond to the Procurement Division regarding Contractor disputers in a timely manner;
- c. ensure proper documentation is kept for the duration of the Contract and any guarantee or maintenance period, including any correspondence with the Contractor, tracking of the projected progress, supporting documentation, etc.; and
- d. attending all telephone or face-to-face resolution meetings and completing all necessary paperwork, if requested.

Procedure

1. Notice of Dispute and Request to Negotiate

If a dispute arises out of, or in connection with a Contract, and the parties do not resolve some or all of the dispute through informal discussions, then written notice containing a request to negotiate shall be given by either party to the other(s). This notice shall be given promptly in order to prevent further damages resulting from delay and shall specify the issues in dispute.

2. First Level Negotiations

Negotiations shall occur first between representatives of the Contractor and the Project Manager.

3. Second Level Negotiations

If the Project Manager and Contractor do not resolve some or all of the issues in the dispute within fourteen (14) working days after notice has been given, then the parties shall attempt to resolve the issues in dispute through second level of negotiations, between a principal of the Contractor and the Project Manager's Department Head. The parties agree to promptly submit such further and other information and documentation necessary to assess the dispute during these negotiations.

4. Mediation

If the parties do not resolve some or all of the issues in dispute through a second level of negotiations within fourteen (14) working days after notice has been given, then the parties agree to attempt to resolve the dispute through mediation, in accordance with the Terms of Mediation set out in Appendix A.

5. Arbitration

If the parties do not resolve all of the issues in dispute through mediation, then within fourteen (14) working days from the date of the mediator's report, the parties shall submit those issues to binding arbitration pursuant to the *Arbitration Act* (Ontario) and the parties agree to the specific Terms of Arbitration as set forth in Appendix B.

General Terms of the ADR Procedure

1. Injunctive Relief

Nothing herein shall preclude any party from seeking injunctive relief in the event that the party perceives that without such injunctive relief, serious harm may be done to that party.

2. Requisite Authority

The parties agree that the representatives selected to participate in the ADR process will have the authority required to settle the dispute or will have a rapid means of obtaining the requisite authorization.

3. Delay

The progress of any project shall not be delayed by a request for use of the ADR process, unless recommended by the Town.

4. Information

All information exchanged during the ADR process shall be regarded as “without prejudice” communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the ADR process.

Appendices

- Appendix A – Terms of Mediation
- Appendix B – Terms of Arbitration

Related Documents

- Procurement Policy
- Procurement Protest Procedure

APPENDIX A – Terms of Mediation

Notice

If a dispute arises out of, or in connection with a Contract and the parties do not resolve some or all of that dispute through negotiation, then either party to the dispute may promptly submit to the other party(ies) a notice of intent to mediate. This notice shall be in writing and shall specify the issues in dispute.

Selection of Mediator

The parties agree to jointly select a mediator. If the parties cannot agree on the choice of mediator within fourteen (14) working days from the date of the notice of intent to mediate, then a mediator will be chosen, upon application by the parties, by ADR Chambers.

Location

The mediation shall be held in the County of Simcoe.

Exchange of Information

The parties agree to an exchange of all information upon which they intend to rely in any oral or written presentation during mediation. This exchange shall be complete no later than fourteen (14) working days prior to the date set for the mediation.

Costs

The parties agree that they will each be responsible for the costs of their own legal counsel and personal travel. Fees and expenses of the mediator and all administrative costs of the mediation, such as the cost of the mediation room, if any, shall be borne equally by the parties.

Schedule

The parties shall jointly select a date for the mediation that is no later than fourteen (14) working days from the date of the notice of intent to mediate.

Confidentiality

All information exchanged during this mediation shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation.

Caucusing

The mediator is free to caucus with the parties individually, as he/she sees fit to improve the chances of a mediate settlement. Any confidential information revealed to the mediator by one party during such caucusing may only be disclosed to the other party(ies) with the former party's express permission.

Prohibition against Future Assistance

It is agreed that the mediator will neither represent nor testify on behalf of any of the parties in any subsequent legal proceeding between the parties or where they are opposed in interest. It is further agreed that the person notes and written opinions of the mediator made in relation to this mediation are confidential and may not be used in any subsequent proceeding between the parties or where they are opposed in interest.

Termination

Either party may terminate the mediation at any time.

Mediator's Report

In the event that no agreement is reached, or is reached on some issues only, the mediator shall promptly provide a report to the parties stating only that no agreement was reached on some or all of the outstanding issues.

No New Steps

During the course of mediation, the parties agree to take no new steps in any legal proceeding between them which concerns the same matter as is the subject of this mediation.

APPENDIX B – Terms of Arbitration

Notice

The part requesting arbitration shall do so by written notice to the other party.

Commencement of the Proceedings

The arbitral proceeding commences on the date of receipt of the notice to arbitrate the dispute.

Selection of Arbitrator(s)

The parties agree to jointly select an arbitrator. If the parties cannot agree on the choice of arbitrator(s) within fourteen (14) working days from the date of commencement of the proceedings, an arbitrator will be chosen, upon application by the parties, by ADR Chambers.

Location

The arbitration shall be held in the County of Simcoe.

Costs

The parties agree that they will each be responsible for the costs of their own legal counsel and other costs incurred in preparing each party's case for arbitration. Fees and expenses of the arbitrator(s) and all administrative costs of the arbitration, such as the cost of the hearing room, if any, shall be borne equally by the parties.

Statement of Claim

Within twenty (20) working days of the selection of the arbitrator(s), the claimant shall submit a written statement of claim to the arbitrator(s) and to the other party, containing a statement of facts, issues in dispute and remedies sought.

Statement of Defence

Within twenty (20) working days following the receipt of the statement of claim, the respondent shall submit a written statement of defence to the arbitrator(s) and to the claimant.

Hearing Date

The parties shall jointly select a date for the hearing that is no later than twenty (20) working days from the date following the submission of the respondent's statement of defence.

Exchange of Information

Each party shall deliver to the other party(ies) and to the arbitrator(s) no later than ten (10) working days prior to the date set for a hearing, a copy of all documents and other materials on which the party intendeds to rely during the arbitral hearing.

Arbitral Award

The arbitrator(s) shall make every reasonable effort consistent with article 18 of the *Arbitration Act* (Ontario) to complete the proceedings and render the award (e.g. six months) of the

commencement date. The arbitral award shall be in writing and include reasons for the decision.

Governing Law Clause

The arbitrator(s) shall resolve this dispute in accordance with the laws of the Province of Ontario.

Judgement

Judgement upon any arbitral award rendered may be entered in any court having jurisdiction thereof.

Prohibition against Future Assistance

It is agreed that the arbitrator(s) will neither represent nor testify on behalf of any of the parties in any subsequent legal proceeding between the parties or where they are opposed in interest. It is further agreed that the person notes and written opinions of the arbitrator(s) made in relation to this mediation are confidential and may not be used in any subsequent proceeding between the parties or where they are opposed in interest.