

## **APPENDIX PART 4**

### **Mediation Procedure**

1. This procedure shall apply to any mediation under Clause 13(b) of the Conditions of Sub-Contract for use with the Forms of Main Contract for Public Works issued by the Department of Finance 2007.
2. Within ten working days of appointment, the mediator shall contact both parties to arrange for a mediation meeting for the purpose of resolving the dispute, such meeting to take place within a further ten working days. Mediation is a flexible process and may be conducted in the manner the Mediator considers most appropriate. The Mediator may meet the parties either together or separately at the Mediator's discretion.
3. At least five working days prior to the mediation meeting each of the parties will supply to the mediator a concise summary of its position in relation to the matters in dispute, appending copies of the relevant documents. These summaries will not be exchanged between the parties or disclosed by the mediator except with the consent of the parties.
4. The mediator may consider and discuss such solutions to the dispute as he/she thinks appropriate or as may be suggested by either party. All information given to the mediator is confidential and shall remain so unless authorised by the party who supplied the information.
5. The mediation is confidential and all involved shall respect this confidentiality. Mediations are settlement negotiations and are without prejudice to the rights of the disputants. The summaries submitted to the Mediator in accordance with Clause 3, all written submissions, statements made, offers or proposals for settlement (made orally or in writing) in connection with the mediation shall be privileged and it shall not be permissible for the other party (not the author or originator of the document, statement, offer or proposal) to use or refer to such items in any subsequent conciliation, arbitration or legal proceedings (except as may be expressly agreed between the parties). Similarly, in any subsequent conciliation, arbitration or legal proceedings, it shall not be permissible for either party to use or refer to any proposals put forward by the Mediator during the Mediation.
6. The disputants agree not to summon or otherwise require the mediator to appear or testify or produce records, notes or any other information or material in any legal proceedings, in court or arbitration, and no recording or stenographic records will be made of the mediation.
7. Each party to the mediation shall pay its own costs. The parties shall be jointly and severally liable for the mediator's fees and costs and shall discharge these in equal shares.
8. Any agreement reached by the parties through the mediation shall be set down in writing and duly executed by their authorised representatives and shall not otherwise be legally binding.
9. In the event of the parties failing to reach settlement, the mediation will terminate when the mediator, at his absolute discretion, so decides or when the parties agree. Upon such termination either party will be entitled immediately to commence conciliation.