

THE UGANDA INSTITUTION OF PROFESSIONAL ENGINEERS ADJUDICATION GUIDELINES AUGUST 2019

1.0 Introduction

Uganda Institution of Professional Engineers (UIPE) is a professional organisation that brings together all Engineers, Technologists and Technicians in Uganda. In Uganda UIPE is the ultimate Dispute Adjudication Board (DAB) that appoints specific adjudicators for all Engineering projects as per the FIDIC yellow book sub clause 8.2.

2.0 Understanding Adjudication

Adjudication is an Alternative Dispute Resolution provided to resolve contractual disputes in a short time possible and at minimal cost as compared to other dispute resolution processes. The process involves appointment of the adjudicator and either contractual party may refer any dispute that may arise to an independent party (the adjudicator) who is then required to make a decision within 28 days of the matter being referred. Adjudication may be invoked at any time of the contract to resolve disputes provided the parties have a contractual relationship.

Most times, the contracts provide for the time frame within which to seek adjudication once a dispute has arisen and as well as providing for the time within which the adjudicator is to make a decision. While adjudication is meant to be a straightforward process without the need to involve lawyers, the parties may wish to consider taking professional advice on particular circumstances.

Adjudication can be sought for matters arising before contract came into existence or for matters arising outside of the contract.

Adjudication does not necessarily achieve final settlement of a dispute because either of the parties has the right to have the same dispute heard afresh in court (or where the contract specifies arbitration, in arbitration proceedings).

Nevertheless, experience shows that the majority of adjudication decisions are accepted by the parties as the final result.

3.0 Starting Adjudication

Adjudication is commenced by any party to a contract when disputes between contracting parties arise under the contract. Any party seeking to refer an issue to adjudication must be sure that the dispute actually exists. If there is no dispute then the adjudicator has no business.

A dispute arises when a claim is made under the contract and the claim is dishonored by the recipient or the recipient does agree with the part of or all the facts. It may not be an express rejection of a claim by the recipient. It is enough if it can be inferred from all the facts that the claim is not admitted and this may include failure to admit the claim within reasonable time.

A dispute may arise out of a financial claim or simply a claim for a right by one party.

Once a party to the contract is satisfied that a dispute has arisen, the party can start the adjudication process by sending a written notice of adjudication to the other party (parties).

4.0 Adjudication Notice

The adjudication notice is a brief description of the dispute and the parties involved, when and where the dispute arose, what remedies are being sought. The adjudication notice is a very important document. It defines what matters the adjudicator has to decide.

The adjudicator has no authority to decide any matter not covered by the notice. It is therefore important for the notice of adjudication to be comprehensive to cover all aspects of a dispute in order to provide for the adjudicator to review all

areas of the dispute and to make a comprehensive decision. Requests such as extension of time payment of money considered to be due, payment of fees and adjudication expenses, and any other specific requests should be clearly itemized and stated in the adjudication notice where they apply. When claiming money, it is advisable to claim for the particular amount wanted and, in the alternative, what the adjudicator thinks is due.

5.0 Appointment of Adjudicator

Most contracts in our jurisdiction name The President of Uganda Institution of Professional Engineers as an adjudicator or Uganda Institution of Professional Engineers as an Adjudicator Nominating Body.

In any case, the party referring the dispute for adjudication is required to send a referral notice to Uganda Institution of Professional Engineers and a copy is sent to the other party. The referral notice is accompanied by all information that is considered necessary for the adjudicator to make a decision. The referral notice must be consistent with the adjudication notice. The referral notice constitutes details of the dispute and how it arose, detail the facts to rely upon, documentary evidence to support those facts, sufficient details of the contract to show that there is a contractual right to the remedy sought, and the list of decisions that the adjudicator is required to make.

Where the President or Uganda Institution of Professional Engineers is named in the contract as an adjudicator, the President will commence the adjudication process as soon as the adjudication fees is paid. The President may in alternative name a person to adjudicate the dispute in consultation with the Public Relations and Professional Ethics (PRPE) Committee and in such a case the parties shall be notified within 5 days of receiving referral and the adjudication

process shall commence as soon as the appointment is made and adjudication fees paid.

Where Uganda Institution of Professional Engineers is named as the Adjudicator Nominating Body, the President may name a person to adjudicate the dispute in consultation with the Public Relations and Professional Ethics (PRPE) Committee and in such a case the parties shall be immediately notified of the person named within 5 days of receiving referral notice and the adjudication process shall commence as soon as the appointment is made and initial deposit on adjudication fees paid.

In case the named adjudicator is rejected by any of the parties to the contract, The President in consultation with PRPE Committee will name another person to adjudicate within 5 days of receiving notice of rejection of the nominated person.

The 28 day period for the decision making starts on the date when the adjudicator receives your referral notice and upon payment of initial deposit on adjudication fees.

6.0 Attributes of an Adjudicator

Adjudicators are expected to be impartial and thus should treat parties fairly and without favour or disfavour, nor there be any appearance that the adjudication might do so.

Any person to be named an adjudicator should be a corporate member of UIPE and registered with Engineers Registration Board and with high moral standing and integrity and knowledgeable.

7.0 Adjudication Fees

Adjudication fees will be charged in accordance with Uganda Institution of Professional Engineers (UIPE) /Engineers Registration Board Scale of Fees.

Where adjudication fees prescribed in the contract is less than the UIPE Scale of fees, the UIPE Scale of Fees will prevail.

Initial deposit of Uganda Shillings 5,000,000 (five million) will be paid the party referring the dispute to adjudication a condition to commence the adjudication.

The actual adjudication fees will be determined by the adjudicator and communicated to the parties within 5 days of commencing adjudication.

Adjudication fees will be shared equally by the parties. The party referring the dispute to adjudication may pay the total adjudication fees in cases where the other pay fails to effect payment in time and where such delay may affect adjudication process and in such a case, the 50% of payment is recoverable from the other party.

8.0 Adjudication Costs

Each party will meet its cost of adjudication process and the adjudicator will not award adjudication costs unless specified in the contract.

9.0 Adjudication Proceedings

The adjudicator is expected to commence adjudication as soon as the appointment letter is received and upon payment of initial deposit on adjudication fees. The adjudicator will undertake to resolve the adjudication conflict by one or combination of the following as maybe considered appropriate and necessary to collect evidence support claims and /or counter claims, reviewing documents provided, convening adjudication meetings: conducting site visits and inviting witnesses.

The parties to the dispute are expected to comply with any request or direction of the adjudicator. If they do not comply and cannot show sufficient cause (that is a good reason) why they have not complied , then the adjudicator may

continue with the adjudication In the absence of the documents or party , draw such inferences from the failure as may be justified and make a decision on the basis of the information before the adjudicator . If a document or statement is submitted beyond a deadline, the adjudicator may attach such weight to it as he thinks fit.

10.0 Adjudication Decision

The adjudicator's decision may include one or a combination of the following; an order for the payment of money from one party to another, an award of interest on outstanding payments , a statement relating to disputed fact or technical matter or any other decision relating to the claim.