

South Carolina State Ports Authority
Arbitration Proceedings

1. Purpose

The purpose of this procedure is to provide a prompt, cost-effective, and efficient manner to resolve disputes between the South Carolina State Ports Authority (Authority) and the contracting party (Contracting Party) arising under or related to this Agreement.

2. Waivers and Consents

By entering into the agreement, the parties waive objection and consent to the following.

- (1) The arbitration procedures set forth in this section.
- (2) That the arbitration procedures set forth in this section shall apply to any dispute or claim that arises out of or that relates to this Agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this Agreement or this section, or that arises out of or relates to any subcontract or sub-subcontract.
- (3) That the (a) Authority and (b) the contractor (or Contracting Party), and all subcontractors, sub-subcontractors, material suppliers, vendors, engineers, architects, designers, construction lenders, bonding companies, and all other parties concerned with and involved in the performance of this Agreement are bound by this section, and that all such parties shall incorporate this section into any contracts by, between, and among these parties, which contracts are concerned with and involved in the performance of this agreement, or otherwise shall sign a written document agreeing to be bound by this section.
- (4) The submission exclusively to an arbitrator of all issues of substantive and procedural arbitrability.
- (5) The exclusive personal and subject matter jurisdiction of an arbitration in the State of South Carolina.
- (6) Except as otherwise limited by this Agreement, the arbitrator's power and authority to:
 - a. Determine in the first instance the scope of the arbitrator's remedial authority; and
 - b. Grant relief, including awarding any legal or equitable remedy appropriate in the sole judgment of the arbitrator.

The parties further waive the right to:

- (1) Seek to enjoin an arbitration;
- (2) Remove any action under this agreement to a federal court;
- (3) Appeal or challenge an interim ruling or order of an arbitrator;
- (4) Appeal or challenge a final award, except as provided in this Agreement; and
- (5) Challenge whether an arbitration has been properly held, except as provided in this Agreement.

3. Appointment of the Panel

The parties agree to engage a panel of three (3) arbitrators (the "Panel") to be selected from the list of qualified arbitrators maintained by SCSPA. The parties agree to appoint the first three arbitrators on the list of available arbitrators. If any of the selected arbitrators decline the parties' appointment, the parties agree to appoint the next listed arbitrator, and will repeat the procedure until such time as three arbitrators have accepted the parties' appointment.

4. Fees and Expenses

Each party shall be responsible for 50% of the Panel's fees. A party shall pay its portion of the Panel's estimated fees within thirty (30) days of acceptance of the appointment.

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The Panel shall have the authority to incur expenses only as agreed to by the parties. Each party shall be responsible for 50% of the Panel's expenses. The Panel shall provide written notice to each party fifteen (15) days prior to incurring any expense. A party shall pay its portion of the expense within thirty (30) days of receipt of said notice.

5. Hearing Procedures

Within fifteen (15) days of the Panel's acceptance of their appointments, the Panel shall appoint a time and place for a hearing, which shall be held in Charleston County, South Carolina unless the parties agree otherwise in writing.

The Panel may, upon a party's request or at the Panel's discretion, set an expedited schedule for the parties to exchange limited discovery relevant to the arbitration. All discovery shall be completed at least fifteen (15) days prior to the scheduled arbitration hearing.

Each party shall be entitled to present evidence relevant to the arbitration, and to cross-examine witnesses appearing at the hearing. Documents and testimony shall be presented in the order, manner and degree that the Panel deems most efficient and probative. The Panel shall determine the amount of evidence to be presented, and may limit the presentation of any documentation or testimony deemed irrelevant or cumulative.

The Panel may make such rulings, including rulings of law, and issue such orders or impose such sanctions as the Panel deems proper to resolve the arbitration in a timely, efficient, and orderly manner. The Panel may resolve the arbitration on the evidence produced at hearing notwithstanding the failure of a party duly notified to appear or participate in the hearing.

The Panel shall have the power to administer oaths and may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence. The Panel shall have the power to issue subpoenas, *provided, however*, that the Panel shall not have the authority to permit a deposition to be taken by either party.

6. Awards

A final award shall be made within 120 days of the Panel's acceptance of the appointment. The final award must be in writing, signed by each member of the Panel, and provided to each party. The final award shall set forth the Panel's reasoning for the decision.

The parties may extend the time for a final award by unanimous, written consent, given either before or after the expiration of that time, but the extension may not exceed, whether singly or in the aggregate, 60 days after the expiration of the 120-day period.

The Panel shall have the power to make any award, legal and/or equitable in nature, which the Panel deems appropriate. In making the final award, the Panel may make rulings on any issue of law relevant to the arbitration proceeding.

7. Challenges

A challenge to a final award may be taken to the South Carolina Court of Common Pleas located in Charleston County, South Carolina.

A challenge to a final award must be taken within 15 days of the issuance of the final award.

A final award may only be vacated or altered upon one or more of the following grounds:

- (1) The award was procured by corruption, fraud, or undue means;

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- (2) There was evident partiality or corruption in an arbitrator;
- (3) A member of the Panel is guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) The Panel exceeded the powers provided in this agreement, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

8. Confirmation of Final Award

Either party shall be entitled to seek confirmation of the final award with the South Carolina Court of Common Pleas located in Charleston County, South Carolina, upon the expiration of the period within which a challenge may be taken pursuant to Section 7 of this arbitration agreement.

9. Amendment

This Arbitration Proceedings document may be amended by the Authority at any time in its sole discretion, and the Arbitration Proceedings document effective as of the date of the initiation of an arbitration proceeding shall govern.

Effective Date: May 1, 2019