

**RULES OF PROCEDURE: EXPERT OPINIONS ON SECURITY PROVIDED,
ETC.,**

by

THE DANISH BUILDING AND CONSTRUCTION ARBITRATION BOARD

§1.

In construction contracts falling under the 'General Conditions for the Provision of Works and Supplies within Building and Engineering' prepared by the Danish Ministry of Housing on 10 December 1992, the parties may file a request with the Arbitration Board for the appointment of an expert who will give an opinion on the release of security provided, cf. §6, subs.7, and §7, subs. 3, and on the justification of holding back payments or effecting set-offs in case of disagreements between the parties as described in §22, subs. 14, cf. §46, subs.1. The expert cannot be appointed from among the members of the Arbitration Court's Presidium or their deputies.

§2.

The request shall be filed with the Arbitration Board in writing and must be accompanied by the following information, cf. 'General Conditions for the Provision of Works and Supplies within Building and Engineering', (AB 92), §45, subs.2, cf. §46, subs.3:

- 1) information on the parties involved, their addresses and telephone numbers,

- (2) a written statement containing a brief description of the case and a list of the questions on which the expert is to give an opinion,
- (3) all relevant documents,
- (4) an indication, if appropriate, of the technical qualifications to be possessed by the expert, and
- (5) an indication of whether the opinion is to be treated as urgent, in which case a special fee is payable.

The parties should also state the names of any experts who have been interested in the case or given opinions in it.

A copy of the request shall at the same time be sent to the other party under the construction contract.

§3.

Depending upon the nature of the dispute the Arbitration Board may decide that such opinion is to be given by several experts.

§4.

The party filing the request shall provide security for all costs arising out of the making of the opinion, including a fee payable to the Arbitration Board in cover of its handling costs for the case. The Arbitration Board shall decide the size and nature of such security, which is to be provided immediately. If the scope of the case turns out to be wider than originally anticipated, the Arbitration Board may demand that the security be increased.

§5.

Notice of the appointment of an expert shall be sent to the parties together with a copy of the present rules.

Objections to the competence of the appointee shall be made immediately upon receipt of the notice of appointment. If an objection is made, the Arbitration Board shall consider whether it is justified and, in the affirmative, appoint another expert.

§6.

In cases of urgency the Arbitration Board may appoint an expert capable of performing the task at short notice.

In such cases the Arbitration Board may depart from the present rules if necessary.

§7.

The Arbitration Board shall stipulate a short period within which the opponent may file a statement.

Under special circumstances the expert may allow the parties to file one more statement within a short period fixed by the expert. Upon the expiry of such period the expert will as soon as possible and within 15 workdays decide to what extent the request for payment is seen to be justified and award costs, including the fee payable to the expert.

Under exceptional circumstances the Arbitration Board may extend the periods fixed by up to 10 workdays.

The expert may give his opinion orally or in writing or as a mixture of the two.

§8.

Once the opinion has been given and the costs relating thereto have been paid, the parties shall be entitled to ask that all original documents, drawings, and the like, be returned to them. The Arbitration Board may demand that it be given authenticated copies of all such documents as the parties want returned to them.

§9.

Should a party fail to appear or otherwise be unwilling to assist in the elucidation of the case, such party must accept that the expert will base his opinion on the information furnished by the other interested parties and such information as he himself may have procured.

§10.

Should the expert want further information or to conduct further inquiries - apart from such as serve to supplement his own general professional knowledge - he shall inform the parties thereof and hear their opinion.

§11.

Under special circumstances it may be decided that payments to private employers and to contractors are to be conditional upon the provision of security, in which case the expert shall stipulate the nature and size of such security as well as the conditions applying to its release or cessation. In case of requests for the release of security provided by the employer, the expert may under special circumstances also refer the contractor to bring the matter before the Arbitration Court, cf. 'General Conditions for the Provision of Works and Supplies within Building and Engineering', (AB 92), §47.

§12.

As soon as he has concluded his inquiries, the expert shall produce and sign an opinion to be filed with the Arbitration Board, which will forward it to the parties.

The opinion shall state the identity of the persons participating in the case, and whether, despite being duly convened, any of the interested parties failed to appear or were unwilling to furnish information in the case.

If two experts fail to reach agreement, the Arbitration Board may appoint a third expert, and the opinion shall then follow the majority of votes.

Whenever disagreement exists between the experts, this shall be explicitly stated, and the opinion of each expert shall appear from the opinion.

§13.

The payment of amounts under the decision to release security provided shall be effected within 3 workdays of the day when the parties and the guarantor receive notice in writing thereof.

§14.

The Arbitration Board shall decide the size of the fee payable to the expert and shall calculate the total costs of the opinion, including the fee mentioned in §4 above, and shall settle the amount with the party/parties who, under the opinion, is/are to pay the costs, cf. §7 above.

The parties shall be jointly and severally liable for the payment of the total costs, regardless of such amount being in excess of the security provided.

The Danish Building and Construction Arbitration Board

10 June 1993