

Cheat Sheet for Responding to an Adjudication

In the Contract / Subcontract Itself

- consider terms and conditions which detail adjudication processes. See our Guide in that regard.

After the Contract is Signed

- consider whether or not you can agree on a list of agreeable adjudicators with the party you contracted/subcontracted with. These persons will have to be listed in the Registry of Adjudicators to be able to act. You cannot do this in the contract/subcontract itself (other than on P3 projects), but you can *after* the contract/subcontract has been signed;
- manage possible disputes before they arise on site through better record keeping. Upon becoming aware of a possible dispute, alter record keeping to best prove your case should the other side decide to adjudicate. Consider compiling evidence in that regard, including quantity take-offs, costing documentation, industry specifications or manuals, damages assessments or expert reports, for example;
- remember that, once commenced, you will have very, very little time to respond. Establishing a relationship with experienced consultants and counsel will enable you to respond to adjudication notices quickly and effectively. Readiness is the key.

Responding to an Adjudication

- consider whether or not settlement discussions or a mediation should be proposed;
- consider if the Notice was properly given in accordance with the *Act*;
- consider whether or not the parties have agreed (or should agree) that more than one matter should proceed together to adjudication or if a number of adjudications should be consolidated;
- read your contract/subcontract to see what adjudication provisions, beyond those provided for in the *Act*, have been agreed to. Subcontractors need to see if Prime Contract terms in that regard have been incorporated into the contract/subcontract;
- work diligently to agree on an Adjudicator who will agree to act on agreed upon rates, and who is well suited to address the matters in dispute. Consider those with legal backgrounds if legal, as opposed to factual, issues are in dispute. If no Adjudicator is selected by agreement, the other side will have to request the appointment of an Adjudicator. Nothing will happen until this request is made;
- 5 days after the Adjudicator's appointment, you are to receive the documents the other side relies on, along with a copy of the contract/subcontract. You will have a chance to respond. Follow the procedures as directed by the Adjudicator, as per the processes set out in the *Act* and as per any agreed upon processes that are consistent with the *Act*;
- unless the parties and the adjudicator agree otherwise, the Adjudicator has 30 days from the date the other side's documents were provided to you, to make a decision. **This is a very tight timeframe.** Rights of cross-examination/oral submissions will, if allowed at all, be extremely limited. Most adjudications will be determined in writing only. Readiness with a persuasive argument on both the law and the facts is key;
- Be prepared to make very concise written (and only possibly oral) submissions in support of your position. As there is no right of appeal, retain counsel to assist as necessary, particularly where legal issues or substantial dollars are involved.