

Dispute Resolution Board Foundation. *Moving projects forward* since 1996.



# 2010 Survey Results

## The Manual Committee:

Joe Sperry

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**929 surveys e-mailed out**  
**116 surveys returned**  
**= 12.5% return rate**



## **1C: Role in DRBs (response point of view)**

- Owners 11%
- Contractors 15%
- E/D/C 17%
- CM 5%
- DRB 46%
- Other 6%

attorneys  
claims consultants

# Respondent Demographics



## 1D: Past Employment Experience

- Owners 15%
- Contractors 35%
- E/D/C 29%
- CM 10%
- DRB 1%
- Other 11%

attorneys,  
claims consultants

## 1E: Major Field of Construction Experience

- Buildings/Industrial/Vertical 16%
- Highway/Bridges 30%
- Underground 40%
- Other 13%

heavy civil



# DB Member Experience

## 2B: Experience w/ Preparation of Contract Docs (all or at least one)

- DRB members 47%
- Owners/Eng/CM 69%

## 2C: Importance of Training

- All DRB members -- before appointment 68%
- All must stay current 52%
- National list of Certified candidates 33%



# Member Selection

## 2D: Past Employees Allowed to Serve

- DRB members: 68%
- All others: 41%

## 3A: Soliciting engagements: How pro-active?

- Call contacts: DRB 40%      All others: 19%
- Only respond: DRB 43%      All others: 57%



# Member Selection

## 3E: Attorneys on Boards

- Never 26%
- Only w/ Construction Experience 63%
- Only as Chair 3%
- No Restriction 7%

## 3F: Restrictions on Number of Attnys per DRB

- Only one 67%
- Max of two 10%
- All-Attorney DRBs are OK 7%

# Conflict/Impartiality

## 4A: Witnessed Conflict

- Clear 19%
- Perceived 34%
- Never 51%

## 5A: Witnessed Impartiality

- Clear 27%
- Perceived 40%
- Never 41%

# Indemnification



## 6: Indemnification

- |   |     |
|---|-----|
| – Only agree to full indemnification        | 58% |
| – Sometimes without full indemnification    | 10% |
| – Have business liability insurance         | 8%  |
| – Have professional liability insurance     | 16% |
| – Handle in another manner                  | 6%  |
| – I would like to participate in discussion | 22% |

# Formal Dispute Hearings



## 8A: Timing of Hearing

– After notice, before claim	9%	
– After claim, before rejection	16%	
– After rejection, before appeal	37%	
– After CO final decision	28%	
– Other	9%	Contract FIDIC



# Formal Dispute Hearings

## 8F: Material Presented

- Limited to est. positions 41%
- New info allowed 5%
- Whatever is best 51%
- Other 8%

## 8G: Refusal to Appear

- Cancel hearing 22%
- Proceed without absentee 44%
- Reschedule 21%
- Other 15%

Limited reschedule  
Depends on admissibility



# DRB Recommendations

## 9A: Quality of Recommendations

- Very good 51%
- Mostly poor 1%
- Mixed 34%
- Other 11% No hearing

## 9C: Importance to Abide by Contract

- No deviation 77%
- Contract not important: settle 12%
- Other 11% Industry Standards Intent

# Admissibility



## 11: Admissibility

- Always 52%
- Never 11%
- Upon agreement of parties 17%
- Upon request of either party 4%
- At direction of judge 15%

# Termination of Dispute Boards



## 12A: When Should DB Cease to Function?

- Not until formal acceptance 25%
- Not until final payment 22%
- No meetings, but stay until final payment 61%
- When either party loses confidence 16%
- If both parties agree 66%
- When Board members agree 20%
- Other 3%

# Termination of Dispute Boards



## 12D: When Should Board Members Resign?

- |  |     |
|--|-----|
| – Loss of capacity                           | 96% |
| – Too busy                                   | 80% |
| – Status changed to indicate partiality      | 97% |
| – Either party believes them partial         | 49% |
| – Either party rejects without justification | 14% |
| – Other                                      | 8%  |



# Informal Dispute Boards

## 13A: Experience with Informal DRBs

- Yes 53%
- No 47%

## 13B: If yes, What is Experience (of 62)

- Positive: helped avoid 81%
- Positive: more timely 73%
- Negative: made it worse 2%
- Neutral 6%
- Waste of time 0%
- Other 6% Inappropriate  
Too early to say

# Use of DRBF Manual



## 14A: Which Version of Manual

- |                     |     |  |
|---------------------|-----|--|
| – 1996 Hardback     | 15% | multiple                               |
| – 2007 DRBF Edition | 44% |  |
| – None At All       | 43% | All in contract<br>Not used in any DRB |

## 14B: Which Portions Useful (of 50% answering)

- |                               |     |
|-------------------------------|-----|
| – Concept and Experience      | 57% |
| – Practice                    | 75% |
| – International Applications  | 21% |
| – Case Histories              | 27% |
| – Guide Specifications        | 69% |
| – Sample Format of Recommend. | 61% |
| – Examples of Recommend.      | 39% |
| – Other                       | 10% |

# DRB Foundation Questions



## 1: DRBF Member

- Yes 72%
- No 24%

# DRBF Questions



## 2: Important Elements of the DRBF

- |                                      |     |
|--------------------------------------|-----|
| – Training programs                  | 73% |
| – Newsletter                         | 63% |
| – Technical information              | 45% |
| – Annual meeting                     | 29% |
| – Networking opportunities           | 69% |
| – Clearinghouse (résumés on Web)     | 39% |
| – Membership Directory               | 43% |
| – Opportunity to increase use of DBs | 77% |



# DRBF Questions

## 3: Scope of DRBF

- Promote use of DBs 100%
- Provide education 100%
- Certify competence 46%
- Certify impartiality 20%
- Expand the scope 6%

## 4: Dues Structure

- Too expensive 4%
- Too cheap 4%
- Right 92%

# Additional Information



Complete results will be published in  
a future edition of the *Forum*

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# Questions and Thoughts to Ponder



# Question: How Standardized Can/Should DRB Contract Terms and Three Party Agreements Be?

- Different States have different contract requirements driven by State Legislative rules
- Federal funding of projects requires adherence to Federal standards or requirements
- Industries (or States) new to the DRB process seek guidance for appropriate DRB contract provisions
  - Example: DOTs are often tasked with preparing contracts on specialty projects where they may have little or no experience (i.e. tunnels) and turn to “Highway” project contract examples for DRB provisions
- Should the DRBF Manual address different “Project Locations” or “Project Types”?
- If so, how best to accomplish this objective?

# UNIVERSALLY APPLICABLE CONSIDERATIONS (NON-BINDING DRBS)



- DRB members are NOT consultants to either Party & must NOT give advice on performance of the work – hence NO liability
- Role of the DRB
  - Dispute Avoidance through regular meetings & informal (advisory) hearings
  - Dispute Resolution through formal hearings
- Both Parties MUST have confidence in ALL of the DRB members' experience and impartiality/neutrality
- Payment of each DRB member must be equally shared by each Party (50/50) to ensure neutrality
- Selection of the DRB Chair should be left to the DRB members to ensure the Chair has suitable experience in the DRB process & availability/willingness to perform those duties

# SHOULD DRB CONTRACT TERMS & TPA LANGUAGE VARY?

If so, what drives such variations?

Project Type? Location? Other?



- Should DRB compensation take into account local availability of experienced, impartial/neutral DRB candidates?
- Should the frequency of regular DRB meetings vary?
- Should DRB members be compensated for “report preparation”?  
How?
- Should there be limits on what disputes can go to the DRB?  
Minimum \$ limits? Type of issue in dispute?
- Should there be special provisions for Subcontractor participation?  
Should these vary by Project Type?
- Should we provide “on the job” training of new DRB members?  
Third (non-Chair) member of the regular DRB?  
Fourth (non-voting) member of an experienced DRB?  
Other?