

REFERRALS, POSITION PAPERS & EVIDENCE —
WHAT DO DBS WANT?

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- Referral
 - Procedure
 - Rules of Evidence
 - Statements of Case
 - Disclosure
 - Witness Statements
 - Expert Evidence
 - Evidence: Dos and Donts
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- Referral
 - Contract formalities (FIDIC 20.4)
 - Identifies dispute
 - Confers jurisdiction
 - Determines decision date
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- Rules of Evidence
 - Generally, FIDIC DBs are not bound by such rules (FIDIC Procedural Rule 8(c))
 - May be incorporated by Particular Conditions, to govern:
 - Disclosure of documents`
 - Service of witness statements
 - Involvement of party and DB appointed experts
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- Procedure
 - Clear and extensive powers (FIDIC Procedural Rules 5 - 8)
 - Party co-operation (FIDIC 20.4)

- Statements of Case
 - Describe claim/defence
 - Identify basis for claim/defence (relevant contractual terms)
 - State relevant facts
 - State claims/defences (primary and alternative)
 - Request relief (monetary and non-monetary)
 - Append relevant documents (including witness statements and experts' reports)
 - Make case clear, concise and persuasive!
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- Witness Statements
 - Full name and address
 - Relationship with the parties
 - CV/qualifications and relevant experience
 - The relevant facts and sources of information relating to the dispute
 - A statement of truth
 - The signature of the witness, and its date and place of signature
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- Experts' Reports
 - A statement of facts on which the expert's report is based
 - The expert's opinions, including a description of how they were reached, and what factors might change them
 - Terms of reference for DB appointed expert(s)
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- Evidence: Dos and Donts
 - Relevant/material
 - Expert evidence – independent/non-partisan
 - Avoid legally privileged material
 - Keep it clear and concise