
SELECTION AND APPOINTMENT OF DBs

-How to get the best DB Agreements

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DB's – definition

- ▶ ***DB is a group of experts (3 members), or a person skilled, experienced and qualified which has as scope to prevent disputes, if the case, to set this disputes between the parties.***
- ▶ ***DB means one person or three persons named DB in the Contract, or any other person (s) appointed under the provision of Sub Clause 20.2 – “Appointment of DBs” or Sub Clause 20.3 – “Failure to Agree DBs”.***



Sub Clause 20.2 – Appointment of the DBs

The DBs shall comprise (AtT) – one or three members.

Three members DBs – each Parties nominate one member for the approval of the other Parties. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act and chairman.

Sub Clause 20.2 – Appointment of the DBs

From where to pick a DB member:

- ***A list of potential members can be included in the Contract;***
- ***FIDIC President List;***
- ***National List of DBs;***

Sub Clause 20.3 – Failure to Agree DBs

If:

- ▶ ***The Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub – Clause 20.2;***
 - ▶ ***Either Party fails to nominate a member (for approval by the other Party) of a DB by such date;***
 - ▶ ***The Parties fail to agree upon the appointment of the third member (chairmen) of DB;***
 - ▶ ***The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole members or one of the three members declines to act or is unable to act ...***
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Sub Clause 20.3 – Failure to Agree DBs

Then the appointing entity or official named in the Appendix to Tender shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB.

This appointment shall be final and conclusive.



Best DB Agreements

(1)

There is a set of essential provision that must be included in the Contract specification to assure the success of the DB process.

- 1. Provide a selection procedure that ensures absolute neutrality of the selected DB members.***
 - 2. Require periodic meeting that start soon after award of the Contract and continue as long as work from each disputes might arise is underway.***
 - 3. Include a three – party agreement that binds the parties and the DB.***
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Best DB Agreements

(2)

- 4. Require that the owner and contractor share equally all costs of the DB. The Board is a resource for both parties to the Contract and equal cost sharing encourages both parties to utilize it when needed.**
 - 5. Establish informal hearing procedures for faster dispute resolution. Oral, advisory non-binding opinions are issued. This does not preclude a subsequent formal DB hearing.**
 - 6. Allow the DB to hear disputes on all aspects of the Contract. Language limiting issues to be heard enhances the potential for future litigation.**
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Best DB Agreements

(3)

- 7. *Either party may refer a dispute to the DB.***
- 8. *Allow prompt hearing of disputes by not requiring multiple steps of submittals, denials, decisions, final decisions and appeals before a dispute can be brought to the DB.***
- 9. *Provide that recommendations are not binding on either party.***
- 10. *Ensure that recommendations are admissible as evidence, to the extent permitted by law, in case of later arbitration or litigation.***



Best DB Agreements

(4)

- 11. Absolve Board members from personal or professional liability arising from their DB activities, as long as these activities are conducted in good faith.***
- 12. Allow termination of Board members only by agreement of both parties.***
- 13. Ensure that Board members cannot be called as witnesses in subsequent proceedings.***



Actions by the Parties

(1)

- 1. Establish the DB promptly after the Contract is executed, preferably before construction begins, and no later than ninety days after the Contract is executed.***
- 2. Fully investigate the qualifications, especially conflicts of interest and neutrality, of all Board nominees before approving them.***
- 3. Reject all nominees that have a problematic conflict of interest or even a hint of bias.***



Actions by the Parties

(2)

- 4. Provide Board members with copies of construction progress reports and minutes of weekly project meetings.**
- 5. Arrange for periodic meetings and site visits with the DB on a regular basis. It is bad practice to curtail DB meetings simply because there are no apparent disagreements or disputes.**
- 6. Do not require the DB to prepare minutes of periodic meetings.**



Actions by the Parties

(3)

- 7. Promptly negotiate to resolve disputes and, if negotiations fail, take disputes to the DB as soon as possible.***
- 8. Dedicate the resources required to fully present and defend disputes in front of the DB.***



Behavior of Board Members

(1)

- 1. Adhere to the DB Code of Ethics.***
- 2. Remain neutral and avoid any behavior that could lead to a perception of bias, including any ex parte communications. Board members are not an advocate for either party.***
- 3. Avoid all conflicts of interest and notify the parties of any actions that could be perceived as such. Have no financial interest in the Contract or in any party involved in the design or construction of the Contract.***



Behavior of Board Members (2)

- 4. Become familiar with the Contract, plans, specifications and other Contract requirements, such as coordination and scheduling.***
- 5. Do not request that the parties furnish progress documents that they do not already produce in the normal course of scheduling.***
- 6. Keep abreast of job activities and developments by reviewing periodic construction progress reports and minutes of weekly project meetings and by periodic meetings.***



Behavior of Board Members

(3)

- 7. Make no disclosures of project information that is not within the public domain without permission of both parties.**
 - 8. Never give advice on conduct of the work.**
 - 9. Encourage the parties to proactively discuss and resolve potential disputes before they escalate to the point where a hearing is required.**
 - 10. Never promote disputes or comment on the validity of disputes or other issues.**
 - 11. Do not accede to a single party's resignation request without reaching agreement within the DB that this solution would best serve the parties.**
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DB MEMBERS

QUALITIES

- ❑ ***Experience***
 - ❑ ***Contract Knowledge***
 - ❑ ***Language***
 - ❑ ***DB Experience***
 - ❑ ***Procedural Knowledge***
 - ❑ ***Qualifications***
 - ❑ ***Availability***
 - ❑ ***Impartiality***
 - ❑ ***Independence***
 - ❑ ***Knowledge of country law***
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