



Contract & Claims Management Austria

2nd Bucharest DRBF Regional Conference
Site Visits – Experiences and Case Studies

Purpose of Site Visit

- “... to enable the DAB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims.”
(Red Book, PR 2)
- “... and, as far as reasonable, to endeavor to prevent potential problems or claims from becoming disputes”
(MDB’s rules)
- When the DAB deems it necessary in relation to a particular dispute

Site Visits – FIDIC Red Book

General Conditions of Dispute Adjudication Agreement:

- Clause 4 – General Obligations of Member:
lit. h: “ensure ... availability for all site visits ...”
- Clause 5 – General Obligations of Parties:
Parties to ensure payment, if referral requires a site visit

Site Visits – FIDIC Red Book

Procedural Rules (Standing DAB!):

- Clause 1: Intervals 70 – 140 days (unless otherwise agreed), including critical construction events
- Clause 2: Timing and agenda for each visit agreed jointly with Parties (if not agreed, decided by DAB)
- Clause 3: Attended by Employer, Contractor and Engineer. Employer to ensure facilities. DAB to prepare report before leaving the site

Site Visits - ICC Dispute Board Rules

Meetings and Site Visits (Article 12)

- 12.1 DB to establish schedule of Site Visits at beginning (at least 3 per year). Site Visits in absence of one party possible
- 12.2 Site Visits occur at the site (sic!)
- 12.3 DB shall review performance of contractor and provide informal assistance during Site Visits
- 12.4 Any party may request urgent Site Visits
- 12.5 DB to provide written summary

How to organise a Site Visit

- Invitation by DAB (determines date and details)
- Exampel:
 - Motorway, 100 Mio EUR, 36 months time for completion,
 - 3-member full term DAB, members from 3 different countries,
 - First Site Visit 75 days after commencement date.
- You are the Chairman. Arrange an agenda!

How to organise a Site Visit

- Day 1:
 - DAB-Meeting (procedures, documents, communication, program)
 - Full Meeting (Employer, Contractor, Engineer): Presentation of DAB,
 - Lunch
 - Full Meeting: Presentation of parties (contractual issues, objects, rules, methodology, etc.)

How to organise a Site Visit

- Day 2:
 - Site Visit (whole day, overview, critical items)
 - Late Afternoon: private discussion of DAB-members (matters of concern, notes for report)

How to organise a Site Visit

- Day 3:
 - Round up of Site Visit (matters of concern, and how to meet them),
 - Drafting of report
 - Lunch
 - Discussion of report, summary by chairman

Site Visit in case of Dispute

- Red Book (Full Term): has already made regular visits, but may require additional visit to view the subject matter of dispute
- Yellow Book (Ad Hoc): After receiving referral and consultation with Parties, DAB decides whether it wishes a Site Visit

Site Visit in case of Dispute

- Parties shall make available to the DAB access to site
- The DAB is empowered to “... establish the procedure to be applied in deciding a dispute” (PR 8 a).
- Generally recommended to make a Site Visit immediately before the Hearing.
- Under Red Book procedure may have been discussed already at a Site Visit.

Dos and Don'ts for Site Visits

- Limit number of participants (usually fewer than a hearing),
- Require a list of participants in advance,
- Visit critical phases and issues (interfaces),
- Ask questions, whenever appropriate, but make sure both Parties have the opportunity to reply,
- Require more documents, if necessary,
- Identify issues, where agreement is evident,
- Take pictures and include in the report,

Dos and Don'ts for Site Visits

- Avoid being alone with one Party, do not speak with one Party in privacy,
- Separate meetings with the Employer, Contractor & Engineer not allowed (PR 5a), unless otherwise agreed.
- Both Parties giving the opportunity to point out their items of interest
- Do not give advice on technical issues,
- No decision on the matter in dispute. Do not express any opinion on the merits as DAB member (can be considered as "acting in bad faith"!)