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Concept

1 . 1 Introduction and Development of the DRB Concept

Managers of successful construction projects resolve disputes fairly and efficiently. Some projects are blessed with participants possessing the right combination of leadership skills, technical ability, business acumen, and interpersonal skills to resolve disputes among themselves. Other projects are cursed with problems and disputes that are contentious and difficult to resolve. Most projects lie between these two extremes. Owners embarking on a construction program need to develop a mechanism for resolving the range of disputes they might encounter during the execution of a project. One of the most effective tools is the Dispute Review Board (DRB).

Over the years the construction industry dealt with the resolution of claims and disputes through a variety of methods. One of the most successful and enduring is the DRB. A simple description of a DRB is that it is a board of impartial professionals formed at the beginning of the project to follow construction progress, encourage dispute avoidance, and assist in the resolution of disputes for the duration of the project.

Records of the construction industry through the early part of the twentieth century contain little information on the frequency and seriousness of disputes and litigation. It appears that up until the 1940s, commonly used procedures – such as prompt, informal negotiation, or a ruling by the architect or engineer – were generally sufficient to resolve most disputes at the job level.

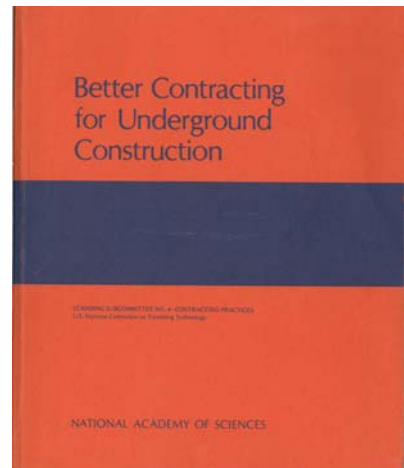
After World War II, competition for construction contracts became intense, and contractors were forced to accept lower profit margins. Further, construction contracts became much more complex, and the construction process was burdened with non-technical demands such as environmental regulations, governmental and socio-economic requirements and public interest group pressures. The financial stability of many contractors with tight margins required that they pursue all available means to protect their bottom line, and a growing body of lawyers and consultants stood ready to assist them.

As this deterioration became more evident, and relationships became more adversarial, the construction industry sought sensible solutions. Arbitration became more popular, as it was less expensive and faster than litigation. However, it became increasingly more costly and time consuming, less satisfactory, and adversarial. Although arbitration continues to offer certain benefits unavailable in litigation – primarily the use of neutrals experienced in the field from which the dispute arises – the cost and time of arbitration today can easily rival that of complex litigation. The ensuing movement away from litigation and arbitration is marked by several events that led to development of the DRB concept.

In 1972 the U.S. National Committee on Tunneling Technology sponsored a study of contracting practices throughout the world to develop recommendations for improved contracting methods in the United States. The study concluded that contracting practices in the United States formed a serious barrier to the containment of rapidly escalating construction costs and contract disputes.

Results were presented in the report *Better Contracting for Underground Construction*, published in 1974. The *Better Contracting* report frequently commented on the deleterious effect of claims, disputes, and litigation upon the efficiency of the construction process. Many recommendations were aimed at mitigating this problem. Over the years, an increasing number of consulting engineers and owners adopted its recommendations.

This report exposed many of the problems facing the construction industry and increased awareness of the high cost of claims, disputes, and litigation to the industry and to the public.



In 1975 the underground industry first used the DRB process during construction of the second bore of the Eisenhower Tunnel on I-70 in Colorado. It was an overwhelming success; the DRB heard three disputes, owner-contractor relations were cordial throughout construction, and all parties were pleased at the end of the project. Other successful DRBs followed, and soon other sectors of the construction industry began to recognize the unique features of DRBs for resolving disputes. The record during the next three decades, as illustrated in the bar charts in Appendix A, shows the dramatic increase in use and success of DRBs, not only in underground, but in highway, heavy civil, process and building construction.



As the success of the DRB process became more apparent, the use of DRBs greatly expanded in North America as well as throughout the world.

The Dispute Resolution Board Foundation (DRBF) was established in 1996 to promote use of the process, and serve as a technical clearinghouse for owners, contractors, and Board members in order to improve the dispute resolution process. The DRBF has initiated programs for providing DRB information and educational opportunities for all parties involved in construction disputes. For more information on the Foundation, see www.drb.org.

The Manual is a living document that will be changed whenever necessary to reflect the continuing experience gained through the use of DRBs. This section can be downloaded from the DRBF web site (www.drb.org) in PDF format.