

Dispute Review Boards (“DRBs”): Real Time Avoidance and Resolution of Construction Disputes

The DRB process appears to be effective in assisting in the resolution of disputes, leading to more timely completion of projects, reduced cost overruns and avoidance of claims. Utilization of DRBs on larger projects can serve to motivate greater cooperation between parties resulting in fewer unresolved claims and a reduced litigation potential.

**Florida Department of Transportation
Office of Inspector General**

The Dispute Review Board being performed on the CA/T Project is truly a Best Practice within the industry. It is practical, reliable and cost-effective. The track record of resolving issues at a very early stage is clearly evident and should be shared with other State DOTs

U.S. Federal Highway Administration, “Process Review of Dispute Review Board Process on Central Artery/Ted Williams Tunnel Project”

What is it about DRBs that warrant such strong affirmative comments by two governmental agencies involved in construction?

Let’s start by answering some basic questions about the DRB process.

What is a DRB?

A DRB is a unique non-adversarial project management technique which is a pro-active, real time, dispute circumvention method utilized during the course of construction.

Are DRBs the same as other ADR methods?

No. DRBs are unique from other ADR methods because they are contemporaneous with the development of the conflict itself. The forum of DRBs emphasizes the maintenance of project relationships, furthering the goals of partnering, while resolving disputes in a timely and equitable manner. Therefore, DRBs are not actually ADR, since an essential element of a DRB is on avoiding disputes, not merely resolving them.

What is the structure of a DRB?

A DRB panel is comprised of three experienced, respected and impartial construction industry professionals. All three members are neutral and are approved both by the contractor and the owner, who share the costs of the DRB panel equally.

How often does a DRB panel meet?

The DRB panel is organized at the beginning of construction and meets periodically at the jobsite, solely as determined by the project needs of the owner and the contractor. The DRB panel is provided with the contract plans and specifications, becomes familiar

with the project's procedures and participants and is kept abreast of job progress and developments.

Does the DRB panel hear disputes?

The DRB panel meets with owner and contractor representatives during regular site visits in order to resolve issues as they arise, hopefully before the issues are allowed to become adversarial disputes, but also provides a process for both informal and formal resolution of disputes at the job level. The written recommendations of the DRB panel are not binding on either party, but are admissible as evidence, to the extent permitted by law, in case of later arbitration or litigation.

What are the fees of a DRB process?

While there are fees in many DRB systems, only DRB panels that fall within the non-profit Dispute Resolution Board Foundation system have no filing or administrative fees. The only costs to the owner and contractor are the shared hourly and travel costs of the DRB panel members.

How can the success of a DRB be measured?

Over \$80 million of reported construction projects around the world have used DRBs. There were 1150 DRB panel recommendations rendered, with only 31 disputes going unsettled – a success rate of almost **98% without litigation**.

A 2003 national survey of construction industry professionals (111 respondents) who had worked on construction dispute resolution, in aggregate, on 1,423 projects dealing with 1,695 disputes, found that 54% stated DRBs were appropriate for all types of construction projects; 35% stated DRBs reduced the bid price; and 99% believed that DRBs improved communications on a project.

The history of DRBs on the Central Artery/Ted Williams Tunnel Project in Boston, Mass., which is the largest single project successful application of the DRB process, finds that there were 49 DRB panels for over \$7 billion of construction contracts that held over 300 regularly scheduled quarterly meetings, 30 advisory hearings and 29 formal hearings, with only two contracts having issues that went to litigation.

A study by the Florida Department of Transportation concluded that contracts lasting longer than one year with DRBs had less cost and time overruns than comparable contracts without DRBs.

DRBs provide a proven real time process for the avoidance and resolution of construction disputes – returning control of the timing, the costs and the process of dispute resolution back to the owner and the contractor, where it always has belonged.

The Dispute Resolution Board Foundation is a not-for-profit, worldwide volunteer organization of over 600 construction industry professionals interested in promoting the avoidance and resolution of construction disputes through a DRB process.

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