

Glossary

Advisory opinion: The orally delivered product of an advisory opinion meeting.

Advisory opinion meeting: A meeting requested by both parties wherein each party makes a brief presentation to the DRB defending its position on an issue, followed by a discussion, a brief caucus by the Board and concluding with an oral presentation of the DRB's advisory opinion on the issue.

Bias: Favoring one party over the other. Used with "perception" to illustrate that bias can be inferred, perhaps incorrectly, by the other party.

Cause: A breach of a Board member's responsibilities that is considered sufficient to warrant dismissal of that Board member from a DRB.

Chair: The Board member who manages and coordinates implementation of the DRB process and serves as the sole contact between the parties and the DRB.

Common reference document: Materials such as correspondence, reports, and other records that either party considers important to the resolution of a dispute, combined into a paginated, indexed document and transmitted to the DRB prior to a hearing, to facilitate presentation and understanding of a dispute.

Decision: *See recommendation.*

Deliberation: A private meeting of the Board members after a hearing to discuss the dispute, develop findings and recommendation(s) and organize the DRB report preparation.

Disclose: To make known to both parties all facts that might affect a potential or appointed Board member's partiality or the perception of partiality.

Dispute: An issue between the parties that has been referred to the DRB for a recommendation.

DB: The abbreviation for Dispute Board on multinational projects. The three DB members collectively.

DRB: The abbreviation for Dispute Review Board. The three DRB members collectively.

DRBF: The Dispute Resolution Board Foundation.

DRB hearing: A gathering of all parties during which presentations on a dispute referred to the DRB by one of the parties are made to the DRB. Since DRB hearings are informal, reference to a "formal hearing" is considered inappropriate.

Entitlement: The condition when a party to a construction contract is due a consideration as a result of a DRB recommendation. See merit.

Ex parte communication: Refers to any contact between a Board member and a party to the contract that occurs outside of the periodic DRB meetings or hearings, except contacts by the Chair for meeting arrangements, etc.

Fair / Fairness: To avoid misunderstandings these words are no longer used in the Manual. Sometimes a person's opinion is that the contract terms are not "fair" to one of the parties. However, this must not have any bearing on a DRB recommendation since the DRB does not have the authority to change the terms of the contract. A party must go to court for relief from unfair contract terms.

Financial ties: Potential or appointed Board member ownership interest in, or loans, receivables or payables to or from any party to a construction contract.

Issue: A problem or disagreement that is being negotiated by the parties and has not been referred to the DRB for an advisory opinion or a hearing.

Joint statement of dispute: A short (one or more paragraphs) description of the dispute, jointly prepared and agreed to (to the maximum extent possible) by each of the parties. This is submitted to the DRB soon after a hearing is scheduled and before preparation of the common reference document.

Letter of referral: The letter from one of the parties to the DRB Chair requesting a hearing.

Manual: The "DRBF Practices and Procedures" document published by the DRBF and available on the Internet (DRB.org) or as a hard copy purchased from the DRBF.

Merit: The condition when a party to a construction contract is due a consideration as a result of a DRB recommendation. See entitlement.

Multinational: Refers to construction projects where multiple nationalities are involved in the contract. These projects are usually funded by a multinational development bank, the owner is the government of the country where the project is located, and the construction manager and contractor are often from other countries.

Operating Procedures: An informal agreement between the parties and the DRB, drafted by the DRB and approved by the parties, that details the DRB's planned procedures for implementing the DRB process, including dispute hearings.

Partnering: A voluntary system whereby the parties to a construction contract handle problems in a mutually agreeable manner before they turn into major issues that require outside assistance to resolve. Often used in conjunction with DRBs.

Periodic meeting: DRB meeting with the parties at regular intervals used to discuss progress of the work, problems encountered and proposed solutions, issues and potential disputes, and to view the work.

PDF: Adobe nomenclature for the format in which the Manual is available on the Internet.

Party: One of the parties to a construction contract, either the owner or prime contractor.

Parties: The two parties to a construction contract; the owner and prime contractor.

Parties, contracting: The parties to a construction contract – the owner and the prime contractor.

Parties directly involved: The owner and prime contractor, and each joint-venture partner.

Parties indirectly involved: The construction manager, subcontractors of any tier, suppliers, designers, architects, engineers and other professional service firms, consultants to the project, and, the funding agencies, depending on how close they are to the operation of the project.

Position papers: Documents prepared by each party after the common reference document is complete that concisely summarize the party's position, explain relevant factual information, and give the contractual justification for their position, with references to specific pages in the common reference document.

Presentation: Testimony and arguments by witnesses in a DRB advisory opinion or hearing.

Prohibited: Service as a DRB member should not be allowed in certain conditions.

Quantum: The amount of money and/or time established to settle a dispute. Quantum is seldom recommended by a DRB, however, if merit is found, guidelines for quantum are recommended when requested by the parties.

Rebuttal papers: Written rebuttals to position papers submitted by the parties to the DRB before the hearing.

Recommendation: The portion of a DRB report in which the DRB gives their opinion(s) on the merits of a dispute. (1) North America DRB recommendations are seldom binding on the parties, and thus are never referred to as "decisions." (2) In multi-national DB practice, recommendations are frequently "binding in the interim" (i.e., binding unless one of the parties files a timely written notice of objection) and thus are generally referred to as "decisions".

Report: The document prepared by the DRB for the parties after a hearing, containing its findings and supporting rationale and its recommendation(s) for resolution of the dispute.

Scope of the recommendation: Merit and sometimes quantum. Many disputes involve only merit. If quantum is involved and merit is recommended, it is common for the parties to request the DRB to recommend guidelines for determination of quantum.

Site visit / Site tour: The portion of the periodic meeting during which the DRB observes the active work, accompanied by representatives of the owner and contractor.

Specification: The portions of a construction contract that establish the detailed terms and conditions to be followed by the parties.

Testimony: Statements by witnesses in a DRB advisory opinion or hearing.

Three-Party Agreement: A document prepared by the owner and included in the construction specifications. This serves as the contract between the DRB and the parties and specifies the duties and responsibilities of each (the owner, contractor and DRB members) as to operation of the DRB.

Written Permission: Written acknowledgement from both parties that they are aware of the disclosed facts and agree that the facts do not preclude participation as a DRB member.