



# Dispute Resolution Boards: When and Why it Works in Construction Disputes

Webinar Recorded December 7, 2017

## PROGRAM SUMMARY

This webinar will discuss the Dispute Resolution Board process in detail. Prominent construction professionals will discuss all aspects including defining DRBs, the advantages and challenges in the process, the foundation and procedural steps as well as the ethical issues faced.

## AGENDA

<b>1:00 p.m.</b>	<b>Welcome and Introduction of Speakers</b>	(5 minutes)
<b>1:05 p.m.</b>	<b>Goals for the Session</b>	(5 minutes)
<b>1:10 p.m.</b>	<b>Defining Dispute Resolution Boards (DRBs)</b> <ul style="list-style-type: none"><li>➤ Use and Success</li><li>➤ Foundation</li></ul> <b>Selection of DRB Members</b> <b>Site Visits</b> <b>Informal DRB Process</b> <b>Process Steps</b> <ul style="list-style-type: none"><li>➤ Presenting a Claim to a DRB</li><li>➤ Role of the Advocate</li></ul> <b>Drafting and Contractual Requirements</b> <b>Advantages and Challenges in DRBs</b> <b>Ethical Issues</b> <b>Consensus DOCS</b>	(75 minutes)
<b>2:25 p.m.</b>	<b>Conclusion and Questions</b>	(5 minutes)
<b>2:30 p.m.</b>	<b>Evaluation</b>	(5 minutes)
<b>2:35 p.m.</b>	<b>Adjourn</b>	



**Adrian L. Bastianelli III, Esq.**  
Peckar & Abramson, PC

<b>Current Employer-Title</b>	Peckar & Abramson, P.C. - Principal
<b>Profession</b>	Attorney
<b>Work History</b>	Partner, Peckar & Abramson, P.C., 2006-present); Partner, Bastianelli, Brown & Kelley, 1982-2006; Partner, Bastianelli, Thomas, Reifel & Lyon, 1978-82; Partner/Associate, Hudson & Creyke, 1972-78; Law Clerk, U.S. Court of Claims, 1971-72; Civil Engineer, Construction Division, U.S. Corps of Engineers, 1966-71.
<b>Experience</b>	Forty-four+ yeas in private practice of construction law; thirty-eight+ years as an ADR neutral including as an arbitrator, mediator, and DRB member; five years as a civil engineer, and one year as a law clerk for a court.
<b>Alternative Dispute Resolution Experience</b>	Arbitrator in over 200 disputes involving amounts as high as \$80 million over a 30-year period. Served primarily as panelist chair or sole arbitrator. Panelist chair in a dispute requiring over 40 days of hearings. Served as mediator in over 300 disputes, most of which involved millions of dollars in claims. Chair or member of over 14 dispute review boards and member of the American Arbitration Association Roster of Dispute Review Board Members. Negotiated and resolved over 1,000 construction claims during 44 years as an attorney/negotiator. Negotiated and resolved construction claims as an engineer for four years. Serves as a member of the American Arbitration Association Large, Complex Case Program and Master Mediator Panel.
<b>Alternative Dispute Resolution Training</b>	2018 AAA Construction Conference, 2018; Construction SuperConference 2017; Faculty, AAA Construction Conference: Navigating the Unique Aspects of Construction Arbitration, 2017; AAA Construction Conference: Ahead of Schedule and Under Budget, 2016; AAA Using Guided Choice to Increase Satisfaction with the Value of Mediators (Faculty), 2015; ICDR Awards and Commentaries - Just How Different Is International Arbitration Than Domestic Arbitration? 2015; AAA The Dynamics of Multi-Party Mediation for Large,Complex Construction Disputes 2014; AAA Webinar, Guided Choice: Innovations in Mediation to Get Better Settlements at Less Cost, 2014; AAA Five Ways to Reduce the Costs of Construction Arbitration 2014; Faculty, AAA Advanced Mediator Training Series: The Extent (or Limit) of Mediator Influence to Effect Settlement, 2012; AAA Faculty, Advanced Mediator Training, 2010; Faculty, AAA Webinar, Dispute Resolution Boards: When and Why They Work in Construction Disputes, 2010; AAA Webinar, On-Site Resolution: How Does it Work?, 2009; AAA Webinar, Construction ADR Practitioners: Crucial Preparation for the New Industry Standard-Form Contract Documents, 2008; Faculty, AAA Construction Conference: ADR Works, 2008; ICDR International Symposia in Advanced Case Management Issues, 2007; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing

*Adrian L. Bastianelli III, Esq.*  
*Neutral ID : 24886*

The AAA provides arbitrators to parties on cases administered by the AAA under its various Rules, which delegate authority to the AAA on various issues, including arbitrator appointment and challenges, general oversight, and billing. Arbitrations that proceed without AAA administration are not considered "AAA arbitrations," even if the parties were to select an arbitrator who is on the AAA's Roster.

Awards (ACE001), 2004; AAA Construction Industry Arbitrator II Training; Advanced Case Management Issues, 2002; AAA Arbitrator Update 2001; AAA Construction Mediator Training, 1997; AAA Construction Arbitrator Training, 1996; U.S. Arbitration and Mediation, Mediation Training, 1992; various other ADR training.

### **Professional Licenses**

Admitted to the Bar: Kentucky, 1972 (inactive); District of Columbia, 1973; U.S. Court of Appeals: Federal Circuit, Fourth Circuit; U.S. Court of Federal Claims; U.S. Supreme Court. Registered Professional Engineer, Kentucky (#7830), 1971 (inactive).

### **Professional Associations**

Washington Building Congress (Past President); American Bar Association (Forum on Construction Law, Past Chair; Public Contracts Law Section; TIPS; Litigation Section); American College of Construction Lawyers (Fellow; Board of Governors; Past Co-Chair, Dispute Resolution Committee; Chair Public Contracts Committee); Professional Women in Construction, Capital Region (Past Board of Directors); The Construction Group Advisory Board for Thomson/West; Dispute Review Board Foundation (Past Regional Representative); District of Columbia Bar Association; Associated General Contractors; Associated Builders and Contractors; National Association of Surety Bond Producers (Advisory Committee).

### **Education**

Purdue University (BS, Civil Engineering-1966); University of Louisville (JD-1971).

### **Publications and Speaking Engagements**

PUBLICATIONS: Editor and contributor, CONSTRUCTION ADR, ABA Forum on Constr. Law, 2014; Editor, THE JOURNAL OF THE AMERICAN COLLEGE OF CONSTRUCTION LAWYERS, 2006-2008; contributor, MARYLAND CONSTRUCTION LAW DESKBOOK, 2012; editor, THE CONSTR. LAWYER, associate editor/editor 1997-04; STATE BY STATE GUIDE TO CONSTR. CONTRACTS, Aspen, DC Chapter; editor and contributor, FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS, ABA Forum on Constr. Law, 2003 and 2012; "Alternative Dispute Resolution," NEW YORK CONSTR. LAW, Aspen, 2003; "Recovering Delay Damages for Home Office Overhead/Edition III," CONSTRUCTION BRIEFINGS NO. 01-5, Federal Publications, 2001; "The Proactive DRB and the Use of Advisory DRB Process," 5 FOUNDATION FORUM 1, January 2001; "Litigating with the Federal Government," 20:4 THE CONSTRUCTION LAWYER 24, October 2000; "New Federal Regulations Affecting the Construction Industry," CONSTRUCTION BRIEFINGS NO. 98-4, Federal Publications, 1998; contributor, CONSTRUCTION CLAIMS DESKBOOK, Wiley Publications, 1996-02.

RECENT SPEAKING ENGAGEMENTS: How to Effectively Deal with the 300 Change Order Dispute: Who Controls the Process (AAA 2017); Guided Choice Mediation (Construction Law Institute, University of Kentucky 2016); Mediation and the DRB (DRB Foundation 2016); Use of DRBs on Public Projects (DRB Foundation 2016); Demonstrating Your Case Through Effective Graphics (Construction SuperConference 2016); Trial Advocacy Program (Construction SuperConference, 2013, 2014, 2015, 2016); What the Arbitrators Want to Know (ABA Forum on Constr. Law, 2015); Mediation Advocacy Practicum for Young

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Lawyers (ABA Forum on Constr. Law, 2015); The Mediator's Perspective: Common Mistakes Made by Counsel in Mediation (P&A 2015); Advanced Mediator Training Webinar (AAA 2015); Kiewit-Turner, The Right to Stop Work on a Government Contract (ACCL, 2015); Federal Construction Contracting Seminar (NASBP, 2014); Planning and Conducting "Real-Time" Dispute Resolution on the Construction Project – Moving ADR from Pre-Trial to Pre-Default (FSLC 2015); Shades of Grey: How to Approach the Many Tough Judgment Calls that Mediation Requires and Improve Your Chances for a Better Settlement (AGC 2015); Joint Ventures in Construction (NASBP 2014); Guided Choice, Innovations in Mediation to Get Better Settlements at Less Cost (AAA 2014); Five Ways to Reduce the Costs of Construction Arbitration (AAA 2014); Advocacy in Construction Disputes (Constr. Super Conf. 2013 and 2014); Meet the Chiefs (Prof. Women in Constr. 2013); What the Arbitrator and Mediator Want (Univ. of Kentucky 2013); Advanced Mediator Training Series: The Extent (or Limit) of Mediator Influence to Effect Settlement (AAA 2012); Essential Mediation Skills for the New Mediator (AAA 2012); Innovative Contract Management with Dispute Boards (ABA Forum on Constr. Law 2012); Does the Construction Manager Hold All of the Cards? (ABA Forum on Constr. Law, 2012); Mediation and Arbitration in Real Estate and Construction Disputes (Stafford Pub., 2011); Advanced Alternative Dispute Resolution Training in Construction Disputes (MD Bar Assoc., 2011); Hot Tips for Resolving Disputes in a Cost Effective Manner (Prof. Women in Constr. 2011); Mediating the Large Complex Case (AAA, 2010); The Effective Use of DRBs (Webinar AAA 2010); Keys to Preparing a Winning Proposal on Federal Government Contracts and What To Do If You Lose (P&A Seminar, 2010); Effective Use of Arbitration, Mediation and Other ADR Procedures in Resolving Commercial Disputes (MICHPEL 2009); Effective Use of Mediation in Resolving Construction Disputes (Tennessee Ass. of Constr. Counsel 2009); Onsite Dispute Resolution: How Does It Work (AAA 2009); ADR Works: Choosing the Right Resolution Options, AAA (NY and Chicago, AAA, 2008); Construction ADR Practitioners: Crucial Preparation for the New Industry Standard-Form Contract Documents (Webinar AAA, 2008); View from the Other Side: An Arbitrator's Thoughts on How Not to Present Your Case

#### **Awards and Honors**

Cornerstone Award, American Bar Association Forum on Construction Law; Who's Who Legal: 2015 and 2016 Construction Lawyer of the Year Globally. Also listed in top ten in multiple years.

Who's Who Legal Mediation: Listed among top mediators in the world in multiple years.

Chambers, SuperLawyers, and other publications. Listed in top category for multiple years.

#### **Willing to serve without travel cost**

Yes if within 75 miles of Washington DC.

#### **Citizenship**

United States of America

#### **Languages**

English

#### **Locale**

Washington, District of Columbia, United States of America

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**Current Employer-Title** Constructive Dispute Resolutions - Owner

**Work History** Owner, Constructive Dispute Resolutions, 2006-present; Claims Services Manager, Carter & Burgess, Inc., 2005-2006; Senior Counsel/Chief Counsel/Associate Project Director for Claim Resolution, Central Artery/Tunnel Project, 1992-05; Senior Associate, Hutchins & Wheeler, 1989-1992; Associate and Senior Associate, Palmer & Dodge, 1983-89; Law Clerk, Wisconsin Supreme Court, 1983-84.

**Experience** Attorney for over 35 years with a focus on construction law. Initial practice was as a commercial litigator specializing in complex business disputes, including construction disputes, lender liability disputes, appellate tax board appeals and intra-company disputes. During 13-year tenure with the \$15B Central Artery/Tunnel Project, as Senior Counsel and then Chief Counsel, was responsible for a wide variety of legal and management issues arising on the Project, including negotiation of inter-agency agreements, procurement and bidding issues, construction and design disputes, labor issues, environmental litigation, regulatory issues, insurance issues, civil and criminal investigations, legislation, and other governmental issues. After became Associate Project Director for Claim Resolution, was responsible for planning and implementing a program to negotiate and resolve thousands of open claims and issues involving hundreds of millions of dollars. Using an innovative program of structured negotiation and mediation, participated in the resolution of the majority of these open issues and claims involving entitlement issues, design issues, constructibility issues, delay/impact/inefficiency issues, constructive acceleration issues, and pricing/compensability issues. These experiences ensured a good understanding of complex, multi-issue commercial, governmental and construction related disputes. Also well versed in handling the process necessary to manage such complex (and often multi-party) disputes in a fair and equitable manner. Since leaving the CA/T Project, has established a consulting practice concentrating on construction dispute avoidance and dispute resolution. In that role, has done numerous arbitrations and mediations involving construction project disputes.

**Alternative Dispute Resolution Experience** Oversaw the administration of and presentation to numerous Dispute Review Boards (DRBs); participated as an advocate in the mediation of numerous cases, with the majority involving construction disputes. Since 2006 has served as Chairperson and Member of numerous DRBs. Has conducted numerous mediations and arbitrations. Conducts partnering and facilitation workshops. Conducts DRB training and writes articles about DRB practice.

**Alternative Dispute Resolution Training** AAA Interim Awards, Partial Final Awards and Functus Officio: Tailoring Flexible Accessories to Suit a Strict Doctrine, 2017; AAA Clarity in Award Writing, 2017; Getting It Right - Secrets to Writing Better Construction Awards, 2015; Faculty, AAA Fall Construction Conference: Planning Resolution Strategies, 2010; ACR

*Kurt L. Dettman*  
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Advanced Commercial Mediation Institute, 2009; DRBF, Using Dispute Boards to Corral Construction Disputes, 2009; ACR/ACMI: Innovation in Commercial Mediation, 2008; Association for Conflict Resolution, Advanced Commercial Mediation Institute, 2007; Harvard Law School, Program on Negotiation Mediation Workshop, 2007; AAA Construction Mediation Conference: What You Can't Not Know, 2007; AAA Neutrals Conference, 2006; AAA Arbitrator I: Fundamentals of the Arbitration Process, 2006; Dispute Review Board Foundation, Chairperson Training, 2006; National Association of Securities Dealers, Arbitration Training, 2006; Chartered Institute of Arbitrators, Fellows Training, 2006; Dispute Review Board Foundation, DRB Administration and Practice Workshop, 2005; Caltrans DRB training, 2007; Mediation Works, Inc., 40-Hour Mediation Training, 2005.

**Professional Licenses**

Admitted to the Bar: Massachusetts, 1985

**Professional Associations**

Fellow, Chartered Institute of Arbitrators; Dispute Resolution Board Foundation (President-Elect of Executive Board of Directors); Transportation Research Board (Communications Coordinator, Contract Law Committee); Association for Conflict Resolution (Past Chair Commercial Section); ConsensusDOCS 300 (Past Insurance/Surety Working Group, Chair); Massachusetts Uniform Mediation Act Working Group (Past, Public Sector Committee, Chair).

**Education**

University of Wisconsin-Madison (BA, Political Science-1979); University of Wisconsin (JD-1983).

**Publications and Speaking Engagements**

Co-author of Chapter on Dispute Prevention and Dispute Resolution in the ACEC book "Public-Private Partnerships and Design Build"; co-author of Chapter on "Changes, Claims and Disputes" in the ACEC book, "Megaprojects: Challenges and Recommended Practices"; author and co-author of numerous articles on DRB best practices in the DRBF Forum; co-author of 'Resolving Megaproject Claims: Lessons from Boston's Big Dig,' in the ABA Forum on the Construction Industry; "Mediators as Settlement Process Chaperones: A New Approach to Resolving Complex, Multi-Party Disputes," in the ADR Quarterly of the Michigan State Bar Association.

Has spoken at numerous conferences, including: American Bar Association, National Public Contract Law Section Annual Federal Procurement Institute; The Transportation Research Bureau's Legal Conference and Annual Conference; The Construction Management Association's Annual Conference; The American Road and Transit Builder's Annual Conference; the American Bar Association Dispute Resolution Section Annual Conference; American Arbitration Association Conferences; and the Dispute Resolution Board Foundation Annual Conferences.

**Citizenship Languages Locale**

United States of America

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Hingham, Massachusetts, United States of America

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**Deborah Bovarnick Mastin, Esq.**  
Deborah Bovarnick Mastin

<b>Current Employer-Title</b>	Law Office of Deborah Mastin, PLLC. - Attorney, Arbitrator, Mediator, Dispute Board Panel Member
<b>Profession</b>	Florida Bar Board Certified Construction Attorney; Florida Certified Circuit Court Mediator; Florida Qualified Arbitrator; Fellow, Chartered Institute of Arbitrators; Fellow, Dispute Board Federation; American College of Construction Lawyers; College of Commercial Arbitrators
<b>Work History</b>	Law Office of Deborah Mastin, PLLC., 2013-present; Assistant County Attorney, Broward County Attorney's Office, 2011-2013; Assistant County Attorney, Miami-Dade County Attorney's Office, 1978-2011; Attorney, Becker & Poliakoff, P.A., 1976-77; Attorney, Legal Services of Greater Miami, Inc., 1975-76.
<b>Experience</b>	<p><b>CONSTRUCTION, DESIGN AND ENERGY:</b> Arbitrator for disputes arising from design, construction and development of heavy infrastructure projects including highways, bridges and drainage; residential and commercial real estate projects, schools, marinas, power plants, energy distribution; solid waste disposal; represented County in over \$7 billion in projects, including airport expansion at Miami International Airport, Fort Lauderdale-Hollywood International Airport and general aviation airports, performing arts centers, museums, office towers, marinas, transit and automated people mover facilities, chiller plants, roads and utilities, environmental remediation, hazardous material, hotel and commercial fit-out for retail and restaurants, including transactional work and litigation in state and Federal courts.</p> <p><b>GREEN AND SUSTAINABILITY:</b> Accredited LEED Green Associate 2011-2012, drafted contract provisions for LEED compliance on construction projects; Program Co-Chair, "Greening the Law," Florida Bar continuing legal education 2011, panelist COAA</p> <p><b>COMMERCIAL CONTRACTS:</b> Arbitrator in disputes involving government procurement and private commercial and landlord/tenant transactions, copyright infringement, power sales; represented government in commercial real estate leases as both landlord and tenant; vehicle and equipment acquisition and lease-purchases; procurement of billions of dollars of all manner of goods and services for local government including professional accounting and consulting services, and acquisition of heavy vehicles and aircraft, radio and communications equipment; music, theatrical and artistic works and services</p> <p><b>UTILITY AND POWER:</b> arbitrator for multi-million dollar disputes regarding electric power plants and power sales; represented public owner in contract negotiations for electric cogeneration plant, construction of industrial chiller plants, microwave tower installation, installation of underground fuel lines,</p>

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*Neutral ID : 147223*

communications ductbanks and power lines

**INSURANCE AND SURETY:** Arbitrator and advocate in disputes involving payment and performance bonds, letters of credit, comprehensive general liability insurance, public liability insurance, builders' risk insurance, railroad liability coverage, owner-controlled insurance programs

**BUILDING CODE and LICENSURE:** Arbitrator in disputes involving alleged breach of building code or licensing statutes; represented local building department, office of code compliance, and construction trades qualifying board

**TECHNOLOGY, COMPUTER, TELECOMMUNICATIONS, DATA, INTERNET:** negotiated multi-million dollar software licenses for end-user, software escrow agreements, and filed applications for copyright and domain name registration

**BANKRUPTCY:** represented government creditor in Chapter 7 and 11 cases of debtors who were commercial tenants at airports and parks

**ENTERTAINMENT AND VISUAL ARTS:** former counsel to Miami-Dade Film Board, Miami-Dade Cultural Affairs Council, Miami-Dade Art in Public Places Trust, Center for the Fine Arts, Broward County Cultural Affairs Division; drafted contracts with visual and performance artists, with theatrical producers and musicians; Florida Bar Entertainment Art and Sports Law Section (former Chair, former Executive Council)

**GOVERNMENT:** as advocate addressed issues of municipal authority and sovereign immunity, False Claims, Small and Disadvantaged Business programs, Davis-Bacon and local minimum wage requirements, environmental compliance, local and federal procurement and grant requirements

**INTERNATIONAL:** member of arbitration tribunal in international disputes involving parties from Caribbean, Europe, Central America; represented public owner holding multi-million dollar contracts with international contractors (including Brazil, Spain, France, Germany and Japan); past president of Dispute Resolution Board Foundation, Region 1 (USA and Canada), experience with FIDIC contracts; Fellow, Chartered Institute of Arbitrators

### **Alternative Dispute Resolution Experience**

AAA Commercial and Construction Panels since 1997; current member of AAA Large Complex Case Panel, Mega Projects Panel, Master Mediator Panel, Dispute Board Panel; International Centre for Dispute Resolution arbitrator and mediator; Fellow, Chartered Institute of Arbitrators; International Institute for Conflict Prevention and Resolution, construction and commercial arbitrator and mediator; Chaired panels, sat on 3 member and sole arbitrator panels. Arbitrated disputes among domestic and international owners, contractors, construction managers, architects, engineers, subcontractors, sub-consultants, developers, insurers and sureties. landlords and tenants, Property Owners and vendors; . Mediator in federal, state and administrative disputes. Participated in over 100 ADR proceedings. Disputes have ranged from under \$75,000 to over \$40 million, and up to 12 parties

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arising from claims of defective design, late performance, overbilling, mold, defective work, government procurement issues. Damages sought have included delay damages ranging from extended general conditions, loss of profit, loss of bonding capacity, loss of opportunity, idle time, indirect costs, acceleration, interference, and total cost claims, copyright infringement, and royalty underpayments. Resolution required understanding of critical time impact analysis and precedence diagrams.

## **Alternative Dispute Resolution Training**

2017 AAA Construction Conference: Navigating the Unique Aspects of Construction Arbitration, 2017; Faculty/AAA/CCA Arbitration from A to Z - For Both Advocates and Arbitrators, 2016 and 2017; AAA 2016 Construction Conference: Ahead of Schedule and Under Budget (Faculty), 2016; ICDR Miami International Arbitration Conference: The Past the Present and the Future, 2016; Faculty, AAA Lean Mediation and Arbitration, 2015; AAA Explaining Complexity—How to Improve Your Presentation of Technical Information in Arbitration, 2015; AAA The 31st Annual Joint Colloquium, NY, 2014; AAA Winning at Arbitration: More than 30 Specific Tips Advocates Can Use to Improve Arbitration Outcomes, 2014; Faculty, AAA Webinar, Debunking the Myths and Misperceptions of Using Arbitration to Resolve Construction Disputes 2014; 11th Annual ICDR Miami International Arbitration Conference-International Dispute Resolution in the Americas, 2013; Chartered Institute of Arbitrators international commercial arbitration 2013; ICDR International Symposia in Advanced Case Management Issues, 2012; Faculty, AAA, Advanced Mediator Series: The Extent (or Limit) of Mediator Influence to Effect Settlement, 2012; Faculty, AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2012; ICDR 10th Annual Miami International Arbitration Conference - The Greatest Hits, 2012; Faculty, DRBF International Conference, 2012; Faculty, ABA Dispute Resolution Section Spring Meeting, 2013, 2012, 2009; AAA Construction Conference: Cutting Construction Arbitration Costs Without Compromise, 2012; CPR Annual Meeting 2011-2013; Faculty, AAA Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing, 2011; Faculty, DRBF International Construction Conference, 2011; AAA Advanced Mediator Training: Managing the Dynamics of a Multi-Party Case, 2011; ICDR 9th Annual Miami International Arbitration Conference: In House Counsel and International Arbitration, 2011; AAA Managing Your First Arbitration, 2011; Faculty, AAA/ICDR Neutrals Conference, 2010; AAA Advanced Mediator Training, 2010, 2009; Faculty, ICDR 8th Annual Miami International Arbitration Conference: Resolving International Construction Disputes, 2010; Faculty, ABA Dispute Resolution Section, Effective Advocacy in Mediation, Recent Developments in International Arbitration and Efficiency in Arbitration, 2010; ACR Advanced Commercial Mediation Institute, 2009; Faculty, Florida International University School of Law Construction ADR Conference, 2009; Faculty, DRB Foundation, How to Spoil a Good DRB, 2009; AAA Using Dispute Boards to Corral Construction Disputes, 2009; ICDR 7th Annual Miami International Arbitration Conference, 2009; AAA/ICDR Neutrals Conference, 2009; ACR/ACMI: Innovation in Commercial Mediation, 2008; ABA Section of Dispute Resolution, Best Practices in Arbitration, 2007; AAA Construction Mediation Conference: What You Can't Not Know, 2007; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2007; AAA Chairing an Arbitration Panel:

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Managing Procedures, Process & Dynamics (ACE005), 2007, 2005; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007, 2004; Faculty, AAA Neutrals Conference, 2006; AAA Arbitrator Update 2002; AAA Construction Industry Arbitrator II Training: Advanced Case Management Issues, 2001; AAA Construction Industry Mediator Training, 1998; AAA Construction Arbitrator Training Workshop, 1998; AAA/Florida Circuit Court, Mediation Training; various advance mediation courses.

### **Professional Licenses**

Admitted: Massachusetts, 1975; Florida, 1976; U.S. District Court, Southern District of Florida, 1976; U.S. Court of Appeals, Eleventh Circuit, 1981; U.S. Bankruptcy Court, Southern District of Florida, 1994; U.S. Supreme Court, 1988. Florida Board Certified Construction Law, 2007; Florida Certified Circuit Court Mediator, 1996; Florida Qualified Arbitrator, 2008; LEED Green Associate, 2011-2012; AAA Mega Project Panel; AAA Master Mediator Panel

### **Professional Associations**

College of Commercial Arbitrators (Fellow); American College of Construction Lawyers (Fellow); Chartered Institute of Arbitrators (Fellow); Dispute Board Federation (Fellow); Dispute Resolution Centre of Trinidad and Tobago; Florida Bar (Real Property, Probate and Trust Law Section, Construction ADR Committee Chair; Construction Law Certification Course Co-chair; Construction Committee; International Law Section; Entertainment, Art and Sports Law Section, Past Chair); American Bar Association (Dispute Resolution Section; Forum on Construction Industry Governing Committee; Intellectual Property Law Section; Public Contracts Section; Business Law Section and Litigation Section); Dade County Bar Association; Dispute Review Board Foundation (Past President Region 1, USA and Canada); Arbitral Women; Miami International Arbitration Society; International Institute of Conflict Prevention and Resolution (CPR) (Construction and Environmental Committees, Construction and Commercial Neutrals Panel member); International Chamber of Commerce (ICC); International Bar Association (IBA); London Court of International Arbitration; Association of General Contractors (ConsensusDocs DRB Addendum Committee Vice-chair); Airport Council International-North America; International Bar Association; Construction Specifications Institute (CSI); International Chamber of Commerce; Florida Association of Women Lawyers; National Association of Women Lawyers; National Association of Women in Construction

### **Education**

Massachusetts Institute of Technology (Architecture and Planning SB-1972); Northeastern University School of Law (JD-1975).

### **Publications and Speaking Engagements**

Publications: ADR from the Owner's Perspective, "Construction ADR," published by ABA 2014; Co-author, International and Globalization, "Construction Subcontracting," published by ABA 2014; Co-author "Identifying Design and Construction Provisions Impacted by and Impacting on Desired Green Building Goals and Objectives, "Green Building and the Construction Lawyer," published by ABA 2014; Co-author, Chapter 1, "Construction Defects", published by ABA 2012; "Admissibility of Written Decisions of Non-Binding Dispute Board", The Australian ADR Reporter, bulletin of the Chartered Institute of Arbitrators Australia, 2012; "Green Issues in Real Property Development", FLORIDA BAR JOURNAL 2011; Co-author, "To Mediate or Not to Mediate," DISPUTE

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RESOLUTION JOURNAL, August 2007; "Damages in Construction Litigation," FLORIDA CIVIL PRACTICE DAMAGES, Florida Bar, 6th ed. 2005.; columnist on art law issues, ART CALENDER, September, October and November, 1996; co-author, "Limited Editions of Fine Arts Multiples," FLORIDA BAR JOURNAL, 1992; "Purchasing and Bidding Requirements and Challenges," Florida Bar Continuing Legal Education, Florida Bar Local Government Law Section and Tulane University, 1991.

Speaking Engagements: 2016 AAA Construction Conference, "Don't Get Burned - Effectively Hot Tubbing Experts;" Florida Bar Construction Law Institute 2016, "Introduction to the Art of Hot-Tubbing;" 2016 Florida Bar Advanced Construction Law Certification Review Course, "Construction ADR;" University of Miami Law School Guest Lecture 2016, "Construction ADR;" 2016 American College of Construction Lawyers, "A View From the Tribunal - Effective Advocacy in Arbitration;" 2015 American College of Construction Lawyers, "Effective Mediation Advocacy;" Panelist, "Construction ADR", Florida Bar Construction Law Certification Review Course, 2014; "Trains, Planes and Autos - Infrastructure Financing and Delivery," ABA Business Law Section 2014; "international Use of Dispute Boards," ABA Dispute Resolution Section Spring 2014; "Use of Dispute Boards in the USA and Internationally", Dispute Board Foundation Australia, 2012; Panelist, "Best Practices for Dispute Boards", DRBF Brussels, Belgium 2011; Panelist, "Dispute Boards as to Preserve Relationships", ABA Dispute Resolution Section 2012; Faculty, "International Dispute Resolution", Kings College, London, UK 2011; Presenter, "Airport Council International/AGC Project Delivery Summit," 2011; Presenter, "COAA Spring Conference," 2011; Program Co-Chair, "Greening the Law," Florida Bar, 2011; Faculty, "Counseling Clients with Public Contracts," Florida Bar Construction Law Institute, 2011; Presenter, "AAAE Project Planning and Construction Conference," 2011; Faculty, "Green Disputes", AAA/ICDR Neutrals' Conference 2010; Panelist, "Dispute Resolution Boards in Public Construction," ABA Section of Public Contract Law, 2010; "How to Guarantee your Public Construction Project will Cost Lots More Than It Needs To," Miami-Dade League of Cities, 2010; "Beyond Bid Protests," Florida Bar Construction Law Institute, 2010; Panelist, "Cultural Differences between International and Domestic Arbitrations," AAA/ICDR, 2010; Presenter, "Effective Advocacy in Mediation," ABA Dispute Resolution Section, 2010; Faculty, "How to Manage a Dispute Review Board," Florida International University School of Law, 2009; Panelist, "DRB's - A Practitioner's View," AAA, 2009; Presenter, "How to Spoil a Perfectly Good DRB," DRB Foundation, 2009; "Bid Protests and Other Peculiarities of Public Construction," Florida Bar Construction Institute, 2009; "Construction Defects from a Public Owner's Perspective," ABA Construction Industry Forum, 2008; Presenter, "Best Practices in Arbitration," ABA Dispute Resolution Section, 2007; "Third Party Subpoenas," AAA Neutrals Workshop, Miami, FL, 2005; "Owner's Perspective on ADR - Arbitration, Mediation and Dispute Review Boards," AAA Construction Industry Neutrals Conference, 2004.

## **Awards and Honors**

Fellow, College of Commercial Arbitrators; Fellow, American College of Construction Lawyers; AV Rated, Martindale Hubbell; Superlawyer in Florida in construction/surety 2008, 2009; Florida Trend Best Municipal Lawyer 2008, 2010,

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2012; Avvo rated "10".

**Citizenship**

United States of America; United States of America; United States of America;  
United States of America; United States of America

**Languages**

English

**Locale**

Miami, Florida, United States of America

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*Neutral ID : 147223*

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American Arbitration Association

*Dispute Resolution Services Worldwide*

## AAA Dispute Resolution Board Guide SPECIFICATIONS Effective December 1, 2000

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### 1.01 General

#### A. Definitions

1. American Arbitration Association - Neutral not-for-profit provider of Dispute Resolution Board (DRB) services, internationally.
2. Board - See Dispute Resolution Board (DRB).
3. Contract - The construction Contract of which this Specification section is part.
4. Dispute - A claim, change order request, or other issue that remains unresolved following negotiation between authorized representatives of the Owner and Contractor.

5. Dispute Resolution Board (DRB) - Three neutral individuals mutually selected by the Owner and Contractor to consider and recommend resolution of Disputes referred to it .
- B. Summary
    1. A Dispute Resolution Board (DRB) will be established to assist in the resolution of Disputes in connection with, or arising out of, performance of the work of this Contract.
    2. Either the Owner or Contractor may refer a Dispute to the Board. Such referral should be initiated prior to the initiation of other dispute resolution procedures or filing of litigation by either party.
    3. Promptly thereafter, the Board will impartially consider the Dispute(s) referred to it. The Board will provide a non-binding written recommendation for resolution of the Dispute to the Owner and the Contractor.
  - C. Scope
    1. This Specification describes the purpose, procedure, function and features of the DRB. A Three-Party Agreement among the Owner, Contractor and the three Board members using the form and content of Attachment A will formalize creation of the Board and establish the scope of its services and the rights and responsibilities of the parties. In the event of a conflict between this Specification and the Three-Party Agreement, the latter governs.
  - D. Purpose
    1. The Board, as an independent third party, will assist in and facilitate the timely resolution of disputes between the Owner and the Contractor.
    2. Creation of the Board is not intended to promote Owner or Contractor default on the responsibility of making a good-faith effort to settle amicably and fairly their differences by indiscriminate referral to the Board.
  - E. Three-Party Agreement
    1. All three DRB members and the authorized representatives of the Owner and Contractor shall execute the DRB Three-Party Agreement within 14 days after the selection of the third member.
  - F. Continuance of Work
    1. Both parties shall proceed diligently with the work and comply with all applicable Contract provisions while the DRB considers a Dispute.
  - G. Tenure of Board
    1. The Board will be deemed established on the date of establishment stated in the Three-Party Agreement.
    2. The Board will be dissolved as of the date of final payment to the Contractor or, should any disputes be pending as of that date, the date on which the Board issues its recommendations regarding those disputes, unless earlier terminated or dissolved by mutual agreement of the Owner and Contractor. The Board's jurisdiction will continue for a period of thirty days beyond the date of its recommendations for the limited purpose of responding to a request for clarification or in the event that a party introduces new evidence.

## 1.02 Membership

- A. General
  1. The DRB will consist of one member nominated by the Owner and approved by the Contractor, one member nominated by the Contractor and approved by the Owner, and a third member nominated by the first two members and approved by both the Owner and the Contractor. Unless otherwise agreed by the Owner and Contractor, all members shall be selected from a list provided by the American Arbitration Association, compiled from its International Roster of DRB Members. The third member will serve as Chair unless the Owner and Contractor otherwise agree.
- B. Criteria
  1. Experience
    - a. It is desirable that all DRB members be experienced with the type of construction involved in the project, interpretation of Contract documents and resolution of construction disputes.
    - b. The goal in selecting the third member is to complement the experience of the first two and to provide leadership of the Board's activities.
  2. Neutrality
    - a. It is imperative that the Board members be neutral, act impartially and be free of any conflict of interest.
    - b. For purposes of this subparagraph (1.02.B.2), the term "member" also includes the member's current primary or full-time employer, and "involved" means having a Contractual relationship with either party to the Contract, such as by being a subcontractor, architect, engineer, construction manager or consultant.
    - c. The following are disqualifying relationships for prospective members:
      1. An ownership interest in any entity involved (with) the Contract, or a financial interest in the Contract, except for payment for services as a member of the DRB;
      2. Previous employment by, or financial ties to, any party involved in the Contract, including fee-based consulting services, within a period of 10 years prior to award of the Contract, except with the express written approval of both parties;
      3. A close business or personal relationship with any key members of any entity involved in the Contract which, in the judgment of either party, could suggest partiality; or
      4. Prior involvement in the project of a nature that could compromise that member's ability to participate impartially in the Board's activities.
- C. Selection of the Board
  1. Request for Assistance
    - a. Within 14 days of the effective date of the Contract, the Owner and Contractor shall file a Request for Dispute Resolution Board (DRB) Assistance with the American Arbitration Association. The Request for DRB Assistance shall include a description of the construction project including name, location and approximate Contract price and Contract time; guidelines regarding DRB member compensation and expenses, if any, the names, mail and email addresses, telephone and facsimile numbers of the Owner and the Contractor and their representatives, the names and addresses of all design professionals, consultants and first-tier subcontractors then known, together with the AAA filing fee.

2. AAA Inquiry
    - a. Upon receipt of a properly filed Request for DRB Assistance, the AAA shall promptly schedule a telephone conference call with the Owner and Contractor to discuss desired qualifications of DRB members.
  3. List of proposed Board members
    - a. Within 14 days after the information is provided by the Owner and Contractor, the AAA shall send the Owner and Contractor an identical list of persons selected from its International Roster of DRB members, including detailed biographical information and disclosures regarding each listed person.
  4. Pre-appointment Disclosure
    - a. Prior to their being listed for review by the Owner and the Contractor, proposed Board members shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants.
  5. Nomination and acceptance of first two members
    - a. Unless agreed otherwise, the Owner and the Contractor shall each nominate a proposed Board member from the list and convey the nominee's name to the AAA and the other party within 14 days after receipt of the list from the AAA.
    - b. The Owner and the Contractor shall have 14 days within which to accept, in writing to AAA and the other party, the other party's nominee.
    - c. No reasons for non-acceptance need be stated. In the event of non-acceptance, the nominating party shall submit another nomination within 14 days of receipt until two mutually acceptable members are named.
  6. Nomination and acceptance of third member
    - a. Upon acceptance of both of the first two members, the AAA will notify them of their appointment, request that they begin selection of the third member and furnish them with the list of persons, biographical statements and disclosures originally sent to the parties. The first two members will endeavor to nominate a third member who meets all the criteria listed above. The third member shall be nominated within 14 days after the first two members are notified to proceed with his/her selection. The nominee's name will be conveyed to the AAA, who will notify the Owner and Contractor. The Owner and the Contractor shall have 14 days within which to accept, in writing to AAA and the other party, the third nominee. No reasons for non-acceptance need be stated. In the event of non-acceptance, the first two members will be requested to submit another nomination within 14 days of receipt of notice of non-acceptance from the AAA.
    - b. In the event of an impasse in selection of the third member from nominees of the first two members, the third member shall be selected by mutual agreement of the Owner and the Contractor within 14 days of the last non-acceptance notice. In so doing, they may, but are not required to, consider nominees offered by the first two members.
- D. Alternative Procedure for Selection of Single-member Board
1. General
    - a. If the Contract specifies, or the Owner and the Contractor agree, a single-member Board will be established as provided in this Section 102.D
  2. Procedure
    - a. Upon receipt of a properly filed Request for DRB Assistance detailing the agreement of the Owner and the Contractor to a single-member Board, the AAA shall promptly schedule a telephone conference call with the Owner and the Contractor to discuss desired qualifications of the Board member.
    - b. Within 14 days after the information is provided by the Owner and Contractor, the AAA shall send the Owner and Contractor an identical list of persons selected from its International Roster of DRB members, including detailed biographical information and disclosures regarding each listed person.
    - c. Proposed Board members shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants.
    - d. The Owner and the Contractor shall each have 14 days in which to strike names not preferred, number the remaining names in order of preference, and return the list to the AAA. The Owner and the Contractor may strike up to three (3) names each.
    - e. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of the Board member.
    - f. If, for any reason, an appointment cannot be made from the original list, the AAA shall have the authority to send an additional list. If no names are available from that list, the AAA shall have the authority to make the appointment from among other members of its International Roster of DRB members, without the submission of additional lists.
- E. Post-Appointment Disclosure

Board members have a continuing duty to disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants. Upon receipt of such information, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the Board members and others.

F. Board Member Challenge Procedure

Any objection for cause of the Owner or Contractor to the continued service of a Board member shall be made to the AAA. The AAA shall determine whether the Board member should be disqualified and shall inform the Owner and Contractor of its decision, which shall be conclusive.

G. Vacancies

If for any reason a Board member is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. The new Board member(s) shall be selected in the same manner as the original member. In the event of a vacancy after a dispute has been submitted and hearings commenced, the

remaining Board members may continue with the hearing and determination of that dispute, unless the parties agree otherwise.

### 1.03 Operation

#### A. General

1. The DRB shall adopt the operating procedures detailed in the attached Schedule A or formulate new or revised operating procedures consistent with this Specification. Notice of adoption of Schedule A or the Board's proposal for new/revised DRB Operating Procedures shall be provided by the Dispute Resolution Board to the Owner and the Contractor within 28 days after the effective date of the Three-Party Agreement.
2. Any DRB proposal for new/revised procedures shall be discussed and concurred in by all parties at the first Board Meeting.

#### B. Reports and Information

The Board will be kept informed of construction activity and other developments by means of timely transmittal of relevant information prepared by the Owner and the Contractor in the normal course of construction, including but not limited to periodic reports and minutes of project progress meetings.

#### C. Periodic Meetings and Visits

1. The Board will visit the project site and meet with representatives of the Owner and the Contractor at regular intervals. The frequency and scheduling of these visits will be every three months or as agreed upon among the Owner, the Contractor and the Board, depending on the progress of the work.
2. Each meeting shall consist of an informal roundtable discussion and field observation of the work. The roundtable discussion will be attended by authorized representatives of the Owner and Contractor. During the discussion, the Board may facilitate conversation among and between the parties in order to resolve any pending claims which may become disputes.
3. The field observations shall cover all active segments of the work. The Board shall be accompanied by authorized representatives of both the Owner and Contractor.

### 1.04 Review of Disputes

#### A. General

1. The Owner and the Contractor will cooperate to ensure that the Board considers disputes promptly, taking into consideration the particular circumstances and the time required to prepare appropriate documentation.

#### B. Prerequisites to Review

A dispute is subject to referral to the Board when:

1. Either party believes that bilateral negotiations are not likely to succeed or have reached an impasse, and,
2. If the Contract provides for a prior decision(s), such a decision(s) has been issued. The parties shall cooperate to timely comply with any pre-review requirements and may waive such requirements by written agreement.

#### C. Requesting Review

1. Either party may refer a Dispute to the Board. Requests for Board Review shall be submitted in writing to the Chair of the Dispute Resolution Board within 14 days of the final decision required prior to Board review. The Request for Board Review shall set forth in writing the nature of the dispute, the factual and contractual basis of the dispute and all remedies sought, together with all documents that support each element of the claim.
2. A copy of the Request for Board Review shall be simultaneously provided to the other party by the referring party.
3. Within 28 days after the Request for Board Review has been filed, the opposing party shall submit in writing to the Chair of the DRB a Response to Request for Board review, including the factual and contractual basis of any defense, together with all documents that support each element of the defense. If the responding party wishes to counterclaim, the responding party shall, within 28 days after the Request for Board review has been filed, submit, in writing to the Chair of the DRB, a Counterclaim setting forth in writing the factual and contractual basis of the counterclaim and all remedies sought, together with all documents that support each element of the Counterclaim. A copy of the Response and/or Counterclaim shall be simultaneously provided to the other party by the responding party. Within 28 days after a Counterclaim is filed, the party opposing the Counterclaim shall submit, in writing to the Chair of the Dispute Resolution Board, a Response to the Counterclaim setting forth the factual and contractual basis of any defense, together with all documents which support each element of the Response to the Counterclaim. A copy of the Response to the Counterclaim shall be simultaneously provided by the filing party to the other party.

#### D. Scheduling Review

1. Within seven days receipt of the Response to Request for Board Review or Response to Counterclaim, whichever comes later, the Chair will, in consultation with the Owner and the Contractor, establish dates for any additional pre-hearing submissions and schedule a hearing date. The hearing will generally be conducted at the time of the next regularly scheduled Site visit.
2. In addition, the DRB may convene a preliminary hearing by conference call for the purpose of addressing information exchange, the order of proceedings at the hearing, bifurcation of merit and quantum issues and such other matters that the DRB believes will expedite the hearing process.

#### E. Hearing Location

1. Normally, the hearing will be held at the job Site. Any location that would be convenient and have the necessary access to facilities and documentation would also be acceptable.

- F. Hearing Procedures
1. The Dispute Resolution Board shall adopt the Hearing Procedures detailed in the attached Schedule B or develop new or revised Hearing Procedures consistent with this Specification. Hearing Procedures shall be provided by the Dispute Resolution Board to the Owner and the Contractor within 28 days of the effective date of the Three-Party Agreement.
- G. Hearing Attendance
1. The Owner and the Contractor shall have authorized representatives at all hearings. The Dispute Resolution Board may establish rules for the participation of legal counsel and experts at hearings. Unless the DRB permits, counsel may not (a) examine directly or cross-examine any participants; (b) object to questions or factual statements during the hearing or (c) make motions or offer arguments.
- H. Deliberations
1. After the hearing is concluded, the Board will confer to formulate its recommendations. All Board deliberations shall be conducted in private, with all individual views kept strictly confidential from disclosure to others.
- I. Recommendation
1. The Board's recommendation for resolution of the dispute will be provided in writing to both the Owner and the Contractor within 14 days of the completion of the hearings. In difficult or complex cases, and in consideration of the Board's schedule, this time may be extended by mutual agreement of all parties.
- J. Acceptance or Rejection
1. Within 14 days of receiving the Board's recommendation, or such other time specified by the Board, both the Owner and the Contractor shall provide written notice to the other and to the Board of acceptance or rejection of the Board's recommendation. The failure of either party to respond within the specified period shall be deemed an acceptance of the Board's recommendation. If, with the aid of the Board's recommendation, the Owner and the Contractor are able to resolve their dispute, the Owner will promptly process any required Contract modifications.
- K. Clarification and Reconsideration
1. Should the dispute remain unresolved because of a bona fide lack of clear understanding of the Board's recommendation, either party may request that the Board clarify specified portions of its recommendation.
  2. If new information has become available, either party may request that the Board reconsider its recommendation in light of the new information.
- L. Admissibility
1. If the Board's recommendation does not resolve the dispute, the written recommendation, including any minority report, will [not] be admissible as evidence [to the extent permitted by law] in any subsequent dispute resolution proceeding or forum [.] [to establish (a) that the Dispute Resolution Board considered the dispute, and (b) the Board's recommendation that resulted from the process.]

## 1.05 Alternative Dispute Resolution

- A. The Owner and Contractor may, by agreement at any time during review of a Dispute by the Board, refer the dispute to the American Arbitration Association for mediation or any other form of alternative dispute resolution. In such an agreement, the Owner and Contractor shall specify the Dispute that is being referred and, in the event of settlement, shall advise the Board regarding such settlement, after which the Board shall have no further authority to proceed with that matter.

## 1.06 Board Member Fees and Expenses

- A. The fees and expenses of the three members of the Board shall be shared equally by the Owner and the Contractor. Unless otherwise agreed by the parties and the Board, the Contractor shall pay the invoices of all Board members after approval by both parties. The Contractor will then bill the Owner for 50 percent of such invoices.
- B. The Owner will, at its expense, prepare and mail progress reports and provide conference facilities and copying services as reasonably required for Board operations.
- C. If the Board desires special services such as legal or other consultation, accounting, data research and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

## 1.07 Administrative Assistance of AAA

- A. AAA Administration  
AAA will prepare and provide notices of meetings, transmit meeting minutes and Board recommendations and collect and disburse Board member fees and expenses in accordance with attached Schedule C.

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- [PRIVACY POLICY](#)
- [TERMS OF USE](#)
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AAA Dispute Resolution Board Hearing RULES AND PROCEDURES  
Effective December 1, 2000

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- [2.0 General Authority of the Dispute Resolution Board \(DRB\)](#)
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### 1.0 Defined Terms

For the purposes of these Rules, terms not otherwise defined herein shall have the same meanings as assigned to them in the (Contract Name) Contract, Contract (Contract #), unless the context clearly requires otherwise.

### 2.0 General Authority of the Dispute Resolution Board (DRB)

Pursuant to the Contract, Subsection \_\_\_\_\_, the DRB will implement these Hearing Rules and Procedures in a manner to make the hearing informal, efficient, and expeditious. The DRB, however, will retain the authority to conduct the hearing as it deems most appropriate, consistent with the Contract.

### 3.0 Role of Chair

The Chair will be responsible for directing the course of the hearing and for keeping the official records of the hearing.

### 4.0 Scheduling of Hearing

Within seven (7) days receipt of the Response to Request for Board Review or Response to Counterclaim, whichever comes later, the Chair will, in accordance with Specification 1.04.D.1., establish and AAA will notify the Owner and Contractor of the dates for any additional pre-hearing submissions and the hearing date. Except in circumstances that require immediate action, the hearing will be scheduled during a regularly scheduled site visit.

### 5.0 Hearing Location

To the extent practicable, any Dispute Resolution Board (DRB) hearing will be conducted at the job site.

## 6.0 Preliminary Conference

In large or complex Disputes, the Dispute Resolution Board (DRB) may request that the affected parties participate in a telephone or in-person preliminary conference with the DRB. At the preliminary conference, the DRB shall provide the parties with organizational instructions and inform them of any issues that the DRB would like to have addressed at the hearing. The DRB may also address issues such as bifurcation of the merit and amount elements of the Dispute, the desired order of presentation of the parties' positions, the persons who may need to be present at the hearing, and any other matters that would promote the efficient and expeditious processing of the Dispute.

## 7.0 Exchange/Submission of Documents and Exhibits

The DRB may require the parties to produce documents at or before any hearing. At least 14 days prior to the scheduled hearing date, the DRB will notify the parties in writing of any documents that may be required to be produced for the hearing.

At least ten (10) days prior to a scheduled hearing date, the parties shall exchange and simultaneously submit to the DRB a list of each document or exhibit that each party intends to submit, use, or refer to in its presentation at the hearing. Each party shall include with the list a copy of each document or exhibit not included in prior submissions to the DRB.

- a. The parties are encouraged to submit exhibits, charts, or summaries of documents in order to facilitate the DRB's understanding of the issues in the Dispute and to avoid the submission of voluminous records that may not be necessary for the DRB's determination. At least ten (10) days prior to a scheduled meeting date, such documents also shall be exchanged with all other parties to the Dispute and submitted to the DRB.

## 8.0 Preparation for Dispute Resolution Board Hearing

1. The Parties will prepare individual, stand alone statements of position describing the dispute, the Party's position, the contractual justification for that position, and any reference material. Following are suggested guidelines for statements of position and related documentation.
  - a. The Parties should attempt to agree to a simple statement of the dispute, typically limited to one paragraph.
  - b. The statement of position should be structured to be a stand alone document that clearly states the dispute, states the claim amount in time and in dollars if a quantum dispute, states the Party's position in entitlement disputes, clearly defines the contractual justification for the stated position in entitlement disputes, clearly defines the contractual justification for the stated position and the reasoning as to why the other Party's position is not contractually correct and appropriate, including all necessary exhibits referred to in the statement of position and in the planned hearing testimony.
  - c. The Parties should stipulate to as many facts, dates and quantities as possible and include this stipulation in their statement of position.
  - d. The Parties should present their entitlement position in the dispute, with specific references to appropriate contractual documents that support their position and include copies of those documents in the statement of position.
  - e. If quantum is to be considered in the same dispute meeting, the Parties should present their quantum position in the dispute case with specific analysis of the comparative cost, productivity, or timeliness issue.
  - f. The Parties should not send to the DRB or to each other any further exhibits or correspondence regarding the dispute, without the prior approval of the DRB, between the time the statement of position has been sent out and the hearing.
  - g. The statement of position should be hand-delivered to the other party and mailed, overnight mail, no acceptance signature required to deliver, to the DRB members 14 days prior to the established meeting date.
  - h. These guidelines are subject to change to fit the circumstances of a particular dispute.

## 9.0 Evidence/Burden of Proof

The DRB will not be bound by the judicial rules of evidence or burden of proof. The DRB may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant or when it determines it has sufficient understanding of the facts underlying a claim or defense to make its recommendations.

## 10.0 Presentation of Dispute

Each party shall make an initial presentation of its position with respect to the Dispute or defense and one or more rebuttals to any assertion by another party, until the DRB determines that all aspects of the Dispute have been addressed adequately. The DRB may limit the presentation of documents or oral statements when it considers them to be irrelevant or redundant. The DRB members shall control the hearing and guide the discussions of issues by asking questions of the parties in order to obtain expeditiously all information the DRB considers necessary to make its recommendations. The DRB may permit the questioning of one party by another party only if it would facilitate the presentation or clarification of an issue in the Dispute.

### 11.0 Representatives Required to be Present at Meetings

Authorized representatives of the Owner and Contractor shall attend the hearing. Except as provided in Section 11.0 hereunder, no other person may attend the hearing, except with permission of the DRB granted after hearing the objections of all participating parties.

At least ten (10) days prior to a scheduled hearing date, the parties shall exchange and submit simultaneously to the DRB a list of their respective witnesses and representatives planning to attend the meeting. The list should contain the following information: the person's name, title, professional affiliation, and a brief summary of the matters that the person will address.

### 12.0 Participation of Counsel and Independent Experts

If a party intends to be accompanied at the hearing by counsel or by an independent expert, such party shall notify all other parties in writing at least ten (10) Days prior to the scheduled hearing date and shall include such person on the list required by Rule 10.0. If a party has not notified the others within the appropriate time period that it intends to be accompanied by counsel or by an independent expert, but receives another party's notice that it will be so accompanied, the recipient party may then elect to be accompanied by counsel or independent expert if it notifies the other parties and the DRB, in writing, at least five (5) days prior to the scheduled meeting date.

Unless the DRB determines that it would assist resolution of the Dispute, counsel may not (a) examine directly or by cross-examination any witness, (b) object to questions or factual statements made or related during the meeting, and (c) make motions or offer arguments.

### 13.0 Consolidation/Bifurcation of Disputes

The DRB will notify all affected parties in writing if it decides to consolidate Disputes arising out of the same circumstances or involving similar factual or legal issues, or if it decides to bifurcate a Dispute into, first, a determination as to merit and, second, if necessary, a determination as to amount. The parties shall conform their submission of documents and presentations at the hearing to be consistent with such consolidation or bifurcation as determined and instructed by the DRB.

Alternatively, the DRB may decide to issue recommendations as to merit only and request that the parties attempt to determine the amount. If the parties cannot do so, the DRB may schedule further meetings to address any unresolved issues by means of further recommendations.

### 14.0 Disputes involving Subcontractor Claims

The Contractor shall identify clearly in all submissions, each portion of the Dispute that involves a Subcontractor Claim and the identity of the related Subcontractor. The Contractor also shall ensure that all documents required by these Rules and Procedures are timely submitted to the DRB.

At any DRB meeting on a Dispute that includes one or more Subcontractor Claims, the Contractor shall require that an authorized representative of each Subcontractor that is involved in the Dispute with direct and actual knowledge of the facts underlying the Subcontractor claim attend to assist in presenting the Subcontractor claim and to answer questions raised by the DRB members or the Owner's representatives.

### 15.0 Failure to Comply with Meeting Rules and Procedures

A party's failure to comply with the DRB's Meeting Rules and Procedures and other requirements, or use of such rules to obstruct the process, may be considered by the DRB in making its recommendations.

### 16.0 DRB Deliberations

After the close of hearing on a Dispute, the DRB will meet to formulate recommendations for resolution of the

Dispute. All DRB deliberations will be conducted in private and will be confidential.

#### 17.0 Issuance of Recommendations

Within 14 days after the close of the hearing, the DRB recommendation will be forwarded to the Owner and the Contractor by the AAA.

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## AAA Dispute Resolution Board Operating PROCEDURES Effective December 1, 2000

### [1.0 Defined Terms](#)

### [2.0 General](#)

### [3.0 Role of Chair](#)

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### [8.0 Distribution of Site Meeting Minutes](#)

### [9.0 DRB Hearing Rules and Procedures](#)

#### 1.0 Defined Terms

For the purposes of these Rules of Operation, terms not otherwise defined herein shall have the same meanings as assigned to them in the (contract name) Contract, (Contract #), unless the context clearly requires otherwise.

#### 2.0 General

Pursuant to the Contract, the Dispute Resolution Board (DRB) will have the authority to implement these Operating Procedures or formulate new or revised Procedures consistent with the Contract.

The Board will operate in an informal and flexible manner, while attempting to ensure that the parties always understand the procedures the Board will follow. The Board encourages the Parties to evaluate and recommend changes in the Board operating procedures and guidelines to improve the process.

There shall be no ex parte communication, advice or other consultation between any Board member and any Party to the contract including subcontractors and suppliers on any matter or issue that is pending or may become before the Board.

#### 3.0 Role of Chair

The Chair will be responsible for overseeing and keeping records of the DRB activities under the Operating Procedures. The Chair will prepare meeting agenda in consultation with the Owner and Contractor. The Chair will prepare meeting minutes.

#### 4.0 Periodic Progress Reports

Within sixty (60) days after it is established, the Dispute Resolution Board (DRB), in consultation with the Owner and the Contractor, will establish a procedure to provide the DRB with Monthly Progress Reports under the Contract. The DRB members will use these reports to keep informed of construction developments and the progress of the work.

#### 5.0 Scheduling of Site Visits

Site visits to review the progress of the work will be made at least every three (3) months or as agreed upon by the Owner, Contractor and the Board. The DRB may, in consultation with the Owner and the Contractor,

schedule other visits to the site of the work that is the subject of a Dispute.

At least thirty (30) days prior to a proposed Site visit, the AAA will contact the Owner and Contractor to make scheduling and logistical arrangements for the Site visit. The date, time, and location(s) to be visited will be confirmed in writing to the Owner and the Contractor at least ten (10) days prior to the Site visit.

## 6.0 Site Visits

During a site visit, the Chairperson and Members will be accompanied at all times by authorized representatives of the Owner and Contractor. The Contractor and the Owner may designate other persons to attend the site visits, as necessary or appropriate to assist the DRB.

## 7.0 Site Visit Agenda

Each site visit will begin with an informal roundtable discussion and be followed by a field inspection of the Contract work. The agenda for the roundtable discussion shall generally include the following:

- a. Meeting convened by the Chairman of the Dispute Resolution Board;
- b. Review of last meeting minutes and any necessary revisions to those minutes;
- c. Contractor discussion items:
  1. Work accomplished since the last meeting;
  2. Current status of the work schedule and schedule for future work;
  3. Anticipated or potential problems and proposed solutions;
  4. Status of current and potential disputes, claims and other controversies.
- d. Owner discussion items:
  1. The work schedule;
  2. Perspectives on potential disputes, claims and other controversies;
  3. Status of past disputes, claims and other controversies.
- e. Such other items as the parties may wish to discuss with the Board;
- f. Set tentative date for next meeting(s).

## 8.0 Distribution of Site Meeting Minutes

Within two weeks after the Site visit, the AAA will distribute minutes of the Site visit meeting to the Contractor and the Owner.

## 9.0 DRB Hearing Rules and Procedures

DRB hearings will be conducted in accordance with the Disputes Resolution Board Hearing Rules and Procedures, Specification Schedule B.

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