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new strategies to enhance the quality
performance of highway systems

Dispute Review Boards: Resolving Construction Conflicts

It is not uncommon for disputes to arise between owners and contractors during a construction project. One way to resolve disagreements without getting entangled in time-consuming, expensive litigation is by providing for a dispute review board (DRB) in the project contract. The review board, a panel of three experienced, respected, and impartial reviewers, takes in all the facts of a dispute and makes recommendations on the basis of those facts and the board's own expertise. This trend in "preventive law" has been taking hold all over the world, saving time, project costs, and legal fees.

The success rates of DRBs are impressive. According to the Dispute Review Board Foundation, by 2000, 97 percent of construction disputes using DRBs were settled without proceeding to litigation. These disputes involved 757 projects and \$39.5 billion.

The DRB and its procedures are organized before construction begins. The contractor selects one member and the owner another (each must approve the other's choice); and a third is selected jointly. The costs of the review board are often shared by the owner and contractor, and the board's procedures are spelled out beforehand in the contract.

Typically, the DRB receives copies of the contract documents, makes a project inspection tour, meets periodically at the site, and is kept informed of project developments. In the event a discrepancy occurs that the owner and contractor cannot settle on their own, the DRB will hear both sides of the argument at a meeting and produce a written recommendation for resolving the dispute. Although the decision is not binding, the parties usually defer to the judgment of the board; to do otherwise would defeat the purpose of having a DRB. The parties have had an opportunity to be heard, and they recognize that the DRB members have technical expertise and a firsthand understanding of the project.

ADVANTAGES OF USING DISPUTE REVIEW BOARDS

For large, complex projects, DRBs can save enormous amounts of money and time. Disagreements are settled contemporaneous with the construction project, which allows the parties to free up time and resources and allows personnel to work on more productive things. The costs of pursuing court claims are avoided. Further, DRBs offer a forum for subcontractor complaints; many claims involve subcontractors, and DRBs are able to assign responsibility between the owner and primary contractor for those claims.

A useful reference:

Construction Dispute Review Board Manual (McGraw-Hill Construction Series),

R. M. Matyas (ed.), A. A. Mathews, R. J. Smith, & P. E. Sperry, 1996 (ISBN 0070410607).

There are intangible benefits as well. The prospect of reporting to a board of experts shifts owners and contractors into a more proactive, preemptive disposition, which contributes to a more positive atmosphere at the job site. Both parties tend to want to appear cooperative and to hammer out problems before they reach the board level. Preparing for a review may uncover new or better information that can lead to settlement. When settlement cannot be reached, the DRB's recommendation diminishes the likelihood of hard feelings developing between contractors and owners.

Foremost, though, the goal of DRBs is the quick resolution of construction disputes so that construction jobs get completed faster and the parties can avoid adding their case to already clogged civil court dockets.

POTENTIAL DISADVANTAGES

DRBs are normally cost-effective for both parties in large projects because of the potential savings in claims avoidance. For small projects that may find the cost of supporting a DRB prohibitive, the one-person DRB is an option. Like the three-person panel, the single expert is chosen by owner and contractor and operates using the same principles and procedures. Research is underway to measure the costs and benefits of DRBs.

Another drawback may be the relative newness of this concept. Although use of DRBs has spread quickly in the construction industry, contractors who are unfamiliar with the concept may view the DRB as simply an added cost rather than a potential source of savings. Without appropriate training and information about the demonstrated value of DRBs, some contractors may resist their use. Understanding is key to making the process work.

USE OF DRBs ON THE RISE

The nonprofit Dispute Review Board Foundation, located in Seattle, has compiled statistics on the success of DRBs in minimizing construction litigation. It reports that a growing number of State departments of transportation are using DRBs; through late 1998, 285 heavy highway construction projects totaling \$16 billion had 325 disputes go to DRBs for recommendations. Of those, 324 were settled out of court; only one went on to be litigated.

One of the most high-profile construction projects in the country, the Boston Central Artery project, has had much success using DRBs. Of the 123 contracts at the "Big Dig," 47—representing nearly \$7 billion in construction funds—are using DRBs. As of summer 2001, only 15 issues on the project had needed DRB recommendations, and none of these had gone on to litigation.

Additional statistics on DRB use in highway construction by State, type and size of project, and dispute outcome through the year 2000 are available from the Dispute Review Board Foundation.

For more information, contact your local FHWA division office or:

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For information about the DRB process, a copy of the latest statistics tabulated on its use, or information on training and workshops to help owners implement the DRB process, contact:

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