

Dispute Boards in FIDIC Contracts

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DRBF Conference
Sydney May 2012



History of DBs in FIDIC Contracts

1995 - introduced as part of Orange Book dispute settlement procedure

1996 - option for 1987 Red Book

1997 - option for 1987 Yellow Book

subsequently included in all new FIDIC forms of contracts including the MDB harmonised version

FIDIC's Rainbow Colours

Red	Civil Engineering Construction (works designed by the Employer)
Yellow	Plant and Design-Build (works designed by the contractor)
Silver	EPC/Turnkey Projects (one entity takes total responsibility for design & construction)
Green	Short Form of Contract
Gold	Design, Build & Operate
White	Client - Consultant Agreement
Pink	MDB harmonised version of Red book
(Orange	Design - Build & Turnkey - superseded by Yellow and Silver)

Why were DBs introduced?

- challenge for “the Engineer” to give an independent decision
- especially if issues arose from their own previous acts/omissions

Now

DABs are part of the dispute settlement/resolution procedure in :-

- **1999 Red, Yellow, Silver and Green Books**
- **2004 Pink Book (MDB harmonised version)**
- **2006 Dredging and Reclamation Contract**
- **2008 Gold Book**
- **2009 Red Book Sub Contract**

MDB Harmonised Edition 2006

- developed jointly by FIDIC and MDB HOPs
- ownership and copyright remains vested in FIDIC
- licensed to World Bank, ADB, AfDB, IADB, EBRD and many bilaterals including AusAID for unrestricted use by their borrowers
- includes DB provisions, DB general conditions and DB procedural rules

Who make up the DBs?

General qualifications stipulated in Clause 20.2

Key attribute is the respect and trust of the appointing parties

For domestic, small value contracts - local appointments usually appropriate

For international, large value contracts requirement for independence and impartiality

The Impact of DBs

- anecdotal evidence of reduced number of arbitrations
- because parties can quickly and easily call for the DB's advice?
- able to deal with disagreements of any kind
- early resolution with minimal effort and cost

The Future of DBs

- the DB approach now firmly embedded in contract practice
- using a DB to avoid disputes is also now widely accepted
- FIDIC intends to go on including DBs in all its contract forms

Issues

- **misuse of FIDIC contracts by some clients**
- **should the White Book incorporate DBs?**
- **does the background of the DB members matter?**
- **how to assure quality of local lists**
- **need for additional language skills on Presidents list**