

Summary of the United States' Associated General Contractors ConsensusDocs DRB Addendum and Three-Party Agreement

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Background:

In the United States, ConsensusDocs publishes a comprehensive catalog of over 100 contract documents that have been developed by a diverse coalition of more than 40 associations with members from all sectors of the design and the construction industry. ConsensusDocs contracts incorporate best practices and allocate risk to help reduce costly contingencies and adversarial negotiations. ConsensusDocs' stated purpose in publishing these contract documents is to produce what it refers to as a "fair" contract protecting the best interests of the project rather than a singular party, yielding better project results and fewer disputes.²

In 2012 ConsensusDocs established a DRB Addendum Working Group Co-Chaired by Kurt Dettman and Deborah Mastin from the Dispute Resolution Board Foundation (DRBF). The Working Group was comprised of construction industry professionals who worked by consensus over several months to draft a proposed *Dispute Review Board Addendum Specification* (DRB Addendum) and *Three Party Agreement* (TPA) that would be new standard forms for use when parties select the use of a DRB as a dispute mitigation measure pursuant to Article 12 of ConsensusDocs 200.

ConsensusDocs approved both the DRB Addendum and TPA and published them on August 30, 2013. The DRBF Executive Board of Directors also entered into a Memorandum of Understanding Between the Associated General Contractors of America (AGC) And Dispute Resolution Board Foundation, Inc. (DRBF) As an Endorser without Revenue Sharing Concerning Collaboratively Producing and Marketing Design and Construction Contracts. By entering into this MOU the DRBF became the 40th endorser of ConsensusDocs and has the right to comment on all ConsensusDocs agreements and forms.

Key Features of ConsensusDocs DRB Addendum Specification and TPA

The DRB Addendum and TPA are intended to provide a guidance specification; assist in the appointment of appropriately qualified and neutral DRBs; promote uniformity of practice across projects using ConsensusDocs; and implement DRB best practices. The ConsensusDocs DRB Addendum and TPA, based on the DRBF Guide Specifications and TPA, addresses the following topics:

- General Provisions Regarding DRB Responsibilities

¹ The author wishes to acknowledge the contribution of Bill Edgerton, who drafted a comparison between the DRBF Guide Specification and the ConsensusDocs 200.4 DRB Addendum. This comparison appears at Appendix A of this paper.

² The author acknowledges the assistance of Brian Perlberg, the General Counsel of ConsensusDocs in preparing the DRB Addendum and Three Party Agreement. Information on ConsensusDocs can be found at: https://www.consensusdocs.org/FooterSection_About/FooterSection_WhyConsensusDocs

- DRB Member Qualifications
- Establishment of the DRB
- DRB Meetings
- DRB Advisory Opinion Process
- DRB Dispute Submission Process
- DRB Hearing Process
- DRB Reports
- Miscellaneous Administrative Provisions

The key features to focus on are the following:

Ethics:

The DRB Addendum has comprehensive conflict of interest and disclosure requirements. The TPA requires DRB members to follow certain ethics guidelines that are modeled on the DRBF Canons of Ethics, thus making them a contractual requirements. There are repeated references to impartiality throughout the documents in relation to various DRB activities.

Selection:

DRB selection is done early in the project. The parties jointly select the DRB, including the option to select the Chair.

Dispute Prevention:

The DRB Addendum expressly gives the DRB broad jurisdiction, allowing project teams to raise any issue arising out of the project. Another dispute prevention tool the parties have available is to use the DRB for advisory opinions.

Hearing Process:

The hearing process is informal, but orderly. Legal processes are not used. Lawyer participation is limited and under the control of the DRB. Expert participation also is under the control of the DRB.

Summary of ConsensusDocs 200.4 and 200.5

A. ConsensusDocs 200.2

By way of background, ConsensusDocs 200.2 is that standard form of agreement between Owner and Contractor. Article 12 deals with disputes mitigation and resolution. The parties are obligated to engage in direct discussions to try to resolve any disagreement relating to or arising under the agreement (Article 12.2). After direct discussions have failed, the parties may proceed with pre-selected “dispute mitigation procedures”, either the use of a project neutral (Article 12.3.1) or a Dispute Review Board (Article 12.3.2). If a DRB process is selected the parties are directed to enter into the DRB Addendum. If the parties do not resolve the disagreement after following the

selected dispute mitigation procedure, they proceed by one of two pre-selected binding dispute resolution processes, either arbitration or litigation (Articles 12.3.3 and 12.5).

B. ConsensusDocs 200.4 (DRB Addendum Specification)

Article 1: General

The parties agree to establish a DRB and enter into the TPA (Article 1.1 and 1.2). The 200.2 Agreement terms govern, if there is a conflict between it and the DRB Addendum or TPA (Article 1.3). Except as provided otherwise, all matters that arise from performance of the Agreement, and any unresolved dispute, may be referred to DRB by either party (Article 1.4). The parties may also ask the DRB to “address any issue arising out of the Project” (Article 1.4).

Article 2: Definitions

The definitions primarily relate to conflict of interest issues that are covered in Article 3. These include:

- Consulting Capacity (Article 2.1)
- Financial Ties (Article 2.3)
- Involved Entity (Article 2.4)

Article 3: DRB Qualifications

DRB members shall be experienced in the type of construction to be performed; in the interpretation and application of contract documents; and in the resolution of construction disputes (Article 3.1). DRB members also shall be familiar with alternative dispute resolution techniques and trained in DRB best practices (Article 3.1).

DRB members also must meet certain eligibility and disclosure requirements. DRB members are subject to the following specific ethical obligations regarding actual or potential conflicts of interest:

- No current direct employment and past employment must be disclosed and party permission obtained (Article 3.2.1)
- No current consulting capacity and past consulting must be disclosed and party permission obtained (Article 3.2.2)
- No financial ties (unless waived) and previous and certain current financial ties must be disclosed (Article 3.2.3)
- No close personal or professional ties and past ones must be disclosed (Article 3.2.4)
- Past and current service as a DRB member on a project with the Parties or Involved Entities must be disclosed and there cannot be any prior involvement with the project (Article 3.2.5)
- Continuing obligation to avoid conflicts/disclose and comply with the ethical obligations under Three Party Agreement (Article 3.3)

Article 4: Establishment of the DRB

Within 14 days after the effective date of the underlying agreement, the Parties investigate prospective DRB nominees and confer and jointly select a pool of prospective nominees (Articles 4.1 and 4.2). The Parties provide a list to DRB prospects of the Parties and Involved Entities for a conflicts check (Article 4.3). The DRB prospects provide resumes and disclosures to the Parties and the Parties jointly select the DRB and notify the DRB members of their appointment. (Article 4.3.1). The Parties may designate the Chair if they wish; otherwise the DRB nominates the Chair for Party approval (Article 4.3.2). The TPA is executed no later than the first DRB meeting (Article 4.3).

Article 5: DRB Operations

In consultation with the Parties, the DRB shall adopt Operating Procedures that must be consistent with the contract documents but also flexible and subject to adjustment as needed to carry out the DRB's responsibilities (Article 5.1). The DRB will visit the project site periodically and as the Parties request (Article 5.2). The initial DRB meeting is to occur no later than 45 days after effective date of the Agreement, and the Parties are to supply the DRB with relevant project information in advance (Article 5.3). The Parties are to provide project update information to DRB (Article 5.4). The periodic meetings include a site visit with the Parties (Article 5.5).

The primary purpose of the DRB shall be to avoid disputes and help the Parties mitigate the effect of unforeseen events (Article 5.6). With Party permission, a Party's attorney may attend the periodic meetings, as a silent observer (Article 5.6). Statements at DRB meetings are not admissible and are deemed to be settlement discussions (Article 5.7). Other Involved Entities or stakeholders may be invited to attend periodic meetings (Article 5.8).

The DRB may give verbal advisory opinions (Article 5.9). The advisory opinion is a method for potentially avoiding a DRB hearing and may be implemented as part of the Parties' direct discussions at periodic meetings (Article 5.9.1). When jointly requested by the Parties, the DRB, in its discretion, may give a verbal advisory opinion on any issue that could lead to a dispute referable to the DRB. (Article 5.9.2). The DRB Chair establishes the procedure and schedule for the advisory opinion process (Article 5.9.2). If the issue is not resolved by the advisory opinion, the Parties may pursue a formal claim and the prior proceedings shall not be considered (Article 5.9.2)

Article 6: Formal Dispute Resolution Process

The Parties are reminded that prior to referring a dispute to the DRB, there must be direct discussions per Agreement Article 12.2—this process can involve asking the DRB for an advisory opinion (Article 6.1). Either party may refer a dispute to the DRB (Article 6.2.1.1). The dispute referral in writing is made to the DRB and other Party, and shall concisely define the scope of the dispute and the DRB report requested (Article 6.2.1.2). Within 10 days after receipt, the Chair shall confer with parties about the details and timing of the dispute process (Article 6.2.1.3).

The Parties shall submit pre-hearing position papers that include:

- A joint statement of the dispute and scope of relief requested (Article 6.2.2.2.a)
- A common set of documents that the parties will refer to (Article 6.2.2.2.b)
- The basis for each Party's position, including citation to the contract and other supporting documents (Article 6.2.2.2.c)
- When a dispute concerns time, the referring Party shall include a schedule impact analysis (Article 6.2.3)
- When dispute concerns costs or monetary damages, the referring Party shall include back up documentation (Article 6.2.4)

The hearing facilities shall be at or near the project or other location as agreed (Article 6.2.5.1). Prior to the hearing date the Chair shall set a time for the submission and exchange of hearing presentation materials (Article 6.2.5.2). The Parties shall require attendance at the hearing of persons directly involved in the dispute and participants in good faith negotiations prior to submittal of the dispute to the DRB (Article 6.2.5.3.1). Prior to the hearing date the Chair shall set a time for submission and exchange of proposed attendee lists (Article 6.2.5.3.2). Attorneys shall not participate in the hearing without the consent of the other Party and the DRB (Article 6.2.5.3.4). Subcontractors with "pass-through claims" must attend the hearing (Article 6.2.5.3.4).

The conduct of the DRB hearing shall be as per the Operating Procedures and generally consistent with the following:

- The referring Party goes first, followed by the other Party (Article 6.2.5.4.a)
- Both parties are allowed successive rebuttals until the dispute has been presented in full—the DRB is permitted to ask questions, seek clarification, and seek additional information (Article 6.2.5.4.b)
- No cross-examination is allowed, but the Parties, with DRB permission, can ask questions or seek clarification (6.2.5.4.c)

If either Party fails to deliver a timely pre-hearing submittal, the DRB determines whether and when to proceed (Article 6.2.6.1). If some or all of a Party's representatives fail to appear at a hearing, the DRB shall proceed with the hearing as if all Party representatives were in attendance (Article 6.2.6.2).

Experts must be disclosed at least 30 days before the pre-hearing position paper is due (Article 6.2.7.1). The other Party may then retain expert and make expert disclosure at least 10 days before its pre-hearing position paper is due (Article 6.2.7.2). Expert reports intended to be used at the hearing shall be exchanged as part of pre-hearing submittals, with the timing set by the DRB Chair (Article 6.2.7.3).

The DRB's formal report shall include findings and recommendations that cover the following (Article 6.2.8.1):

- Issue in dispute and relief requested
- Parties' positions

- Findings of fact
- Analysis and rationale for recommendation(s)
- Recommendation(s)

The formal report can include a minority report that identifies the areas of disagreement, but all DRB members sign without identifying the member that did not agree all parts of the report (Article 6.2.8.2). The formal report is admissible in subsequent proceedings and the Parties waive any objections to the relevancy and admissibility of the report (Article 6.2.8.3).

Requests for clarification and reconsideration are permitted within certain restrictions and time frames (Articles 6.2.8.4 and 6.2.8.5). Although the Parties agree that great weight should be given to the DRB's report, it is not binding on any Party. Within 14 days after receipt of the report (or later if clarification or reconsideration is requested), the Parties submit written acceptance or rejection of the report (Article 6.2.8.6.1). Acceptance of a report on entitlement does not bind a Party to any particular quantum (Article 6.2.8.6.2). If either Party rejects the DRB report, it may proceed with the binding dispute resolution process designated in the agreement (Article 6.2.8.3). The Parties may also agree to mediation (Article 6.2.8.7).

C. ConsensusDocs 200.5 (DRB Three Party Agreement)

Article 1 Agreement

The Three Party Agreement is made among the Owner, Constructor and the three DRB members (Article 1 preamble). Reference is made to the underlying agreement for the project, including the selection of a DRB as a dispute mitigation procedure (Article 1.A and 1.B).

Article 2 Purpose and Role

The DRB is charged with assisting in and facilitating avoidance of disputes and the timely and impartial resolution of disputes (Article 2.A). Ex parte communications, except for administrative communications with the DRB Chair, are prohibited (Article 2.B). Regardless of the appointment method, the DRB shall be neutral and not a Party representative (Article 2.C).

Article 3 DRB Scope of Work

The DRB is responsible to appoint a Chair (if the Parties have not already done so); stay abreast of project developments through periodic site visits and review of updates; and facilitate communications between the Parties to avoid or mitigate disputes or impacts to the work from unexpected events during the progress of the work (Article 3.A. 1 to 3). The DRB is required to prepare Operating Procedures that govern the details of the DRB process, consistent with the underlying agreement and DRB Addendum (Article 3.B.1). After review and approval by the Parties, the DRB adopts the Operating Procedures, subject to adding or modifying them as agreed by the DRB and Parties (Article 3.B.2 and .3).

The DRB is to provide advisory opinions as requested jointly by the Parties and as deemed appropriate by the DRB (Article 3.C.1). Upon referral of a dispute confer with the Parties to schedule and conduct a timely and orderly hearing process (Article 3.C.2). The DRB convenes internal conferences and meetings as needed determine the outcome of the dispute and formulate the report (Article 3.C.3). The DRB is required to issue timely reports that include the DRB's supporting rationale and recommendation(s) (Article 3.C.5). The DRB is to provide written requests for clarification or reconsideration when requested and deemed appropriate by the DRB (Article 3.C.5). Finally, the DRB is to perform all other services and assume such responsibilities, as agreed by the Parties and as may be required to achieve the purposes of the DRB Addendum (Article 3.D).

Article 4 Ethics and Responsibilities

The DRB has the following ethical and other responsibilities:

- Act ethically, maintain impartiality, and avoid conflicts of interest, including disclosure of any development that could be perceived as a conflict of interest, throughout the life of the project (Article 4.A.1)
- Not engage in any ex parte communications, except as provided in the Operation Procedures (Article 4.A.2)
- Refrain from communicating any opinions of merit prior to issuance of a report, except for advisory opinions (Article 4.A.3)
- Not use information acquired during DRB activities for personal advantage or divulge any confidential information unless approved by the Parties (Article 4.A.4)
- Conduct meetings in an expeditious, diligent, orderly and impartial manner (Article 4.A.5)
- Impartially consider all disputes, basing reports solely on the contract documents and the facts of the dispute (Article 4.A.6).
- Strive to reach unanimous recommendations, but if that is not possible include a minority report without identifying the dissenting member (Article 4.A.7).
- Receive compensation only as specified in the TPA and not receive any bonus or commission payments (Article 4.A.8).

The Owner has the following responsibilities:

- Except for participation in the DRB's activities, do not solicit advice or consultation with the DRB on matters dealing with conduct of the work or resolution of problems that might compromise DRB impartiality on future disputes (Article 4.B.1).
- Furnish to each DRB member copies of specified documents pertinent to the performance of the Agreement and necessary for the DRB to conduct its operations (Article 4.B.2).
- Coordinate DRB operations in cooperation with Constructor (Article 4.B.3).

- Arrange for or provide conference facilities at or near the site, and provide logistical services as needed to support the DRB's operations (Article 4.B.4).
- Cooperate with Constructor and the DRB to facilitate avoidance of disputes and the timely and impartial resolution of disputes referred to the DRB (Article 4.B.5).
- Pay the fees and costs agreed to in this TPA (Article 4.B.6).

The Constructor has the following responsibilities:

- Except for participation in the DRB's activities, do not solicit advice or consultation with the DRB on matters dealing with conduct of the work or resolution of problems that might compromise DRB impartiality on future disputes (Article 4.C.1).
- Furnish to each DRB member copies of documents not furnished by the Owner as the DRB may request (Article 4.C.2).
- Cooperate with the Owner to facilitate avoidance of disputes and the timely and impartial resolution of disputes referred to the DRB (Article 4.C.3).
- Pay the fees and costs agreed to in the TPA (Article 4.C.6).

Article 5 Duration of DRB Activities

Unless the DRB Chair has been previously identified by the Parties, the DRB shall begin its activities by selecting the Chair and receiving Party approvals of the appointment (Article 5.A). The TPA shall survive the termination, resignation, incapacity, or death of any DRB member (Article 5.B). The DRB's jurisdiction under the TPA shall end on the date of final payment under the Agreement, unless the Parties mutually agree in writing to extend the DRB's term or to terminate the DRB earlier (Article 5.A).

Article 6 Cost of the DRB Process

The Parties shall each bear their respective in-house costs and costs of providing their DRB-related services (Article 6.A). The Parties shall equally bear the cost of the DRB's services (Article 6.B).

Article 7 Payment to DRB

Payments made to the DRB members shall constitute full compensation for work performed, travel time and services rendered, and for all materials, supplies and incidentals necessary to serve on the DRB (Article 7.A). Payment for services rendered by DRB members shall be at the rate and conditions agreed to between the Parties and each DRB member (Article 7.B). DRB members shall be reimbursed for specified actual direct, non-salary expenses, subject to any limitations imposed by the underlying project Agreement (Article 7.C). DRB members shall individually submit invoices for work completed to Constructor not more often than once per month; based on the agreed compensation together with expense receipts; and accompanied by a description of services performed (Article 7.D. 1 to 3). Constructor shall promptly seek approval of Owner to pay the DRB invoices; shall pay the accepted invoices within thirty

(30) days after Owner approval; and shall be reimbursed for Owner's share of the costs (Article 7.F).

Article 8 Confidentiality and Recordkeeping

All information provided to and communications with the DRB shall be deemed confidential and for settlement purposes only, unless otherwise agreed in writing by the Parties (Article 8.A). No DRB member shall divulge to third parties information that has been acquired during DRB activities without obtaining prior written approval from the Parties (Article 8.B). DRB members shall maintain cost records pertaining to the TPA for inspection by Owner and Constructor for a [specified] period following the completion or termination of the TPA (Article 8.C).

Article 9 Assignment

No party to the TPA shall assign any duty established under the TPA (Article 9).

Article 10 Termination

The TPA may be terminated by mutual agreement of the Parties at any time upon not less than thirty (30) days written notice to the DRB (Article 10.A). Individual DRB members may be terminated only by agreement of both the Parties; provided, however, if there is a disagreement on this issue the Parties agree to the underlying project Agreement dispute mitigation procedure (Article 10.B). If a DRB member resigns, is unable to serve, or is terminated he or she shall be replaced within thirty (30) days in the same manner as he or she was originally selected (Article 10.C).

Article 11 Legal Relations

The Parties expressly acknowledge that each DRB member is acting in the capacity of an independent contractor and not as an employee of Owner or Constructor (Article 11.A). DRB members shall not participate in, or be required to participate in, any subsequent dispute or legal proceedings regarding the operations of the DRB, including, but not limited to, depositions, testimony, or disclosure of any information regarding the deliberations of the DRB (Article 11.B). The Parties acknowledge that each DRB member is acting in a capacity intended to facilitate the avoidance and resolution of disputes and to the fullest extent permitted by law shall be accorded quasi-judicial immunity for any actions or decisions associated with DRB activities (Article 11.C). To the fullest extent permitted by law, the Parties, jointly and severally, shall defend, indemnify and hold harmless each DRB member from any and all claims, losses, demands, costs, and damages (including reasonable attorneys' fees) for bodily injury, property damage, or economic or other loss arising out of or related to the DRB members carrying out DRB activities (Article 11.D).

Article 12 Disputes Regarding the DRB

Disputes among the Parties arising out of the TPA that cannot be resolved by negotiation and any actions to enforce any right or obligation under the TPA shall be initiated a court of competent jurisdiction in the location of the Project, unless the Parties agree on another mutually convenient location; the DRB members consent to the personal jurisdiction of the Court of the designated jurisdiction (Article 12).

Article 13 Funding Agency Review

The agency funding the project has the right to attend DRB meetings and hearings and to review DRB reports, but not to attend private DRB deliberations (Article 13).

Conclusion

The issuance of ConsensusDocs DRB Addendum and TPA reinforces the use of DRBs as an industry best practice in the United States. The DRBF Manual Update Committee will be taking into account the form of the ConsensusDocs DRBF Addendum and TPA as a recent indication of industry input on DRB best practices. In the future the DRBF will work with other industry groups that issue standard form construction documents to determine whether they are interested in following a similar path for the wider use of DRBs.³

Kurt L. Dettman is the President of DRBF Region 1 and welcomes comments on the ConsensusDocs DRB Addendum Specification and TPA at kdettman@c-adr.com.

³ Visit the [ConsensusDocs website](http://www.consensusdocs.org) to learn more and [read the press release](#) announcing the DRB Addendum Specification and TPA. As a ConsensusDocs Coalition Member, members of DRBF receive Member pricing on all ConsensusDocs products--members should use Discount Code "DRBF100" when purchasing at www.consensusdocs.org.

Appendix A

Bill Edgerton prepared the following summary of the differences between the existing DRBF Model Specification and ConsensusDocs DRB Addendum Specification.

1. Conflict guidelines

The Manual refers to the contracting parties as “directly involved”.

ConsensusDocs refers to them as “parties”. The Manual refers to construction managers, designers, and other professional service entities as participants “indirectly involved”. ConsensusDocs refers to these as “involved entities.”

- a. The Manual prohibits those who currently consult to parties “indirectly involved” from serving as Board members. The ConsensusDocs version allows service, pending disclosure and permission.ⁱ
- b. The Manual requires disclosure of previous financial ties to “indirectly involved” parties. The ConsensusDocs version does not address this point.ⁱⁱ
- c. The Manual requires disclosure of close personal or professional relationships for both “directly” and “indirectly” involved parties. ConsensusDocs prohibits service for those with current close personal or professional relationships with the “parties”, but does not address relationships with “involved entities”.ⁱⁱⁱ
- d. The Manual Prohibits Board members having discussions regarding subsequent agreements/employment with any party, either directly or indirectly involved. ConsensusDocs only requires disclosure of such discussions.^{iv}
- e. The Manual requires a Board member to disclose their selection to any other DRB upon which they are serving if one of the Parties is also involved in the other project. ConsensusDocs does not address this issue.^v

2. Information prior to Appointment

- a. The Manual requires that Board member nominees be provided with project information and the DRB specification. ConsensusDocs does not address this in the list of material to be provided.^{vi}
- b. The Manual requires that Board member nominees provide a detailed list of past DRB participation. The disclosure statement required by ConsensusDocs is not as detailed.^{vii}

3. Operating Procedures

- a. The Manual requires that operating procedures be approved by both the Contractor and the Owner. ConsensusDocs requires only that the Parties be “consulted” about the Operating Procedures.^{viii}

4. ConsensusDocs information not found in the Manual:

The ConsensusDocs specification includes a number of things that are not included in the Manual spec. Some of these things are discussed in the Manual and may be included in the DRB operating procedures. These include:

- a. A list of material required to be furnished to the Board members prior to the initial meeting of the DRB.^{ix}
 - b. A statement of the DRB purpose.^x
 - c. The inadmissibility of statements made at periodic DRB meetings.^{xi}
 - d. A statement that “involved” parties may be invited to attend periodic DRB meetings.^{xii}
 - e. The Chair will set the time for exchange of materials to be used at hearings.^{xiii}
 - f. Personnel directly involved in the dispute and any prior negotiations are required to attend hearings.^{xiv}
 - g. Requires the exchange of expert reports as part of the pre-hearing submittals by each Party.^{xv}
 - h. Subsequent dispute resolution processes may include either a binding process or mediation.^{xvi}
5. Manual information not found in ConsensusDocs:
The Manual specification includes a number of things that are not included in ConsensusDocs:
- a. Written advisory opinions will not be provided, unless requested by the Parties.^{xvii}
 - b. If one Party fails to meet specified time requirements for the various steps in the dispute resolution process, the other Party may refer the dispute to the DRB.^{xviii}
 - c. Parties are to agree on attendees at hearings, or if they cannot agree, submit to the DRB for a final determination.^{xix}
 - d. A statement of overall objective of the hearing, and a requirement that the DRB exercise control.^{xx}
 - e. Provides the flexibility for additional hearing days if necessary for full understanding of the dispute.^{xxi}
 - f. Permits the DRB to allow introduction of new information at hearings that had not previously been submitted, subject to the other Party getting additional time to review and rebut.^{xxii}
 - g. Allows for the use of outside experts by the DRB, and provides requirements therefor.^{xxiii}
 - h. Failure of a Party to respond to a DRB recommendation with the specified time is deemed acceptance.^{xxiv}
6. Pre-Hearing Submittals:
- a. The Manual allows for the submittal of rebuttals if requested by both Parties. ConsensusDocs allows rebuttals only as approved by the DRB chair.^{xxv}
7. Attorney participation at Hearings:
- a. The Manual allows attorney attendance at hearings subject to permission of the other Party, and provides a list of what attorneys are not allowed to do. ConsensusDocs simply prohibits attorney participation without consent of the other Party and the DRB.^{xxvi}
8. Time Limits.^{xxvii}

- a. The Manual states that upon request the DRB will provide written clarification or a response to a reconsideration request within a reasonable period of time. ConsensusDocs specifies these periods as 14 days.^{xxviii}
- b. The Manual specifies that the Parties agree to accept or reject a DRB recommendation within 30 days. ConsensusDocs specifies this period as 14 days.^{xxix}

9. Reconsideration

- a. The Manual allows reconsideration if the "DRB misunderstood or failed to consider material and significant facts". ConsensusDocs does not include this as a reason to allow reconsideration.^{xxx}

ⁱ 3.C.2.b v. 3.2.2.3

ⁱⁱ 3.C.3.c v. 3.2.3

ⁱⁱⁱ 3.C.4 v. 3.2.4.1

^{iv} 3.D.1 v. 3.3.b

^v 3.D.2 v N/A

^{vi} 4.B v. 4.3

^{vii} 4.C.1 and 2 v. 4.3.1

^{viii} 4.G v. 5.1

^{ix} 5.3

^x 5.6

^{xi} 5.7

^{xii} 5.8

^{xiii} 6.2.5.2

^{xiv} 6.2.5.3.1

^{xv} 6.2.7.3

^{xvi} 6.2.8.6.3 and 6.2.8.7.1

^{xvii} 6.B.6

^{xviii} 6.C.2

^{xix} 6.E.2.c

^{xx} 6.E.3.a

^{xxi} 6.E.3.f

^{xxii} 6.E.3.g

^{xxiii} 6.G.2

^{xxiv} 6.H.5.b

^{xxv} 6.D.4 v. 6.2.2.1

^{xxvi} 6.E.2.d v. 6.2.5.3.3

^{xxvii} 6.H.4.a v. 6.2.8.5

^{xxviii} 6.H.3.a and 6.H.4.a v. 6.2.8.4.2 and 6.2.8.5.3

^{xxix} 6.H.5.a v. 6.2.8.6.1

^{xxx} 6.H.4.a v. 6.2.8.5