

Dispute Boards – the Contractor’s perspective

Main issues to be addressed:

1. Advantages of the Dispute Board (DB) to the Project;
2. Effect on tendering;
3. Benefit of rapid resolution of issues;
4. Contractor’s preference for DB decision or recommendation.

1. Advantages of the DB to the Project:

- **DBs may be used in all major constructions’ areas** – Dispute Boards have indeed been used worldwide over the past 15 years in tunneling projects, highway projects, wastewater treatments plants, airports, railways, undergrounds projects, power plants, dams, ports, building construction projects of any kind, etc. and even in shipbuilding;
- **DB consists of professionals** - usually the DB members are engineers, with years of practical experience and great technical knowledge in the fields they are appointed, therefore the appointment and use of DBs constitute a guarantee of practical and experienced approach to Projects’ problems, aimed at resolving them during construction period or to at least minimize them;
- **May assure avoidance of disputes** – before the occurrence of a dispute, whenever there is misunderstanding or divergence of opinions between the Parties in respect of any matter arising from the Contract, the Parties may request the DB’s opinion on any given matter. If such opinion is of help to the Parties, disputes will rarely occur thereof. DBs offer, by way of their skilled approach to Projects, dispute avoidance guidance at all times;
- **Improve communications and maintain the relationships between the Parties** – the Parties are encouraged by the DB to communicate with each other especially

whenever a problem occurs between them in order to at least attempt to find a solution to avoid further expensive procedures such as arbitration. Moreover, the Parties will think twice before exchange hostile correspondence when considering that the DB will certainly not approve of such exchanges and that may negatively affect the position of a party down the road;

- **Address the problems during the construction process (real-time assessment)** – it is very important to attempt solving issues with the help of the DB as they occur and while the Project is progressing, especially considering that the information which may help understand and resolve such issues may consequently be easily and readily available. Addressing the issues/problems when they occur or shortly thereafter prevents the creation of bottlenecks to the overall construction project;
- **Avoid submission of claims at the end of the project** – As consequence of the DB real-time assessment of issues/problems mentioned above, it is mostly the case that problems are tackled when they occur or shortly thereafter. This greatly increases the possibilities of avoiding the accumulation of claims at the end of the Project when Contractors usually assess the events that affected the entire job and issue global claims, which are never successful;
- **Less time required for the DB procedure than the arbitration procedure** – it is a proven fact that the adjudication procedures by using the DBs take much less time than international arbitration proceedings, which are indeed time consuming procedures that may take several years until conclusion;
- **The costs are lesser than the arbitration or litigation costs** – it is for the Parties' benefit to attempt solving their disputes with the DB procedure in order to avoid the costs arising from arbitration/litigation.
- **Offer an informal and non-adversarial process;**
- **Impartiality and independence of the DB member(s).**

2. Effect on tendering:

- It is internationally accepted that tenders will be lower if the DB are encompassed within the Contract clauses/provisions. This is due to the fact that the possible risks associated with the project will decrease to a certain extent; therefore the Contractors will include in their offers the costs of the DB but will not increase the tender prices in order to cover the events and/or circumstances that in the absence of a DB may be construed as being high risks.
- The costs of the DB are shared between the Parties – the DB members are paid an agreed retainer and daily rate, plus reimbursable expenses and thus estimates for the DB cost can be made by the tenderers from the beginning based on the project complexity and the economic environment of the country the project is performed;
- When the Employer agrees to include DB within the Contract provisions, it gives a strong indication that some fair play will prevail during the Contract's performance.

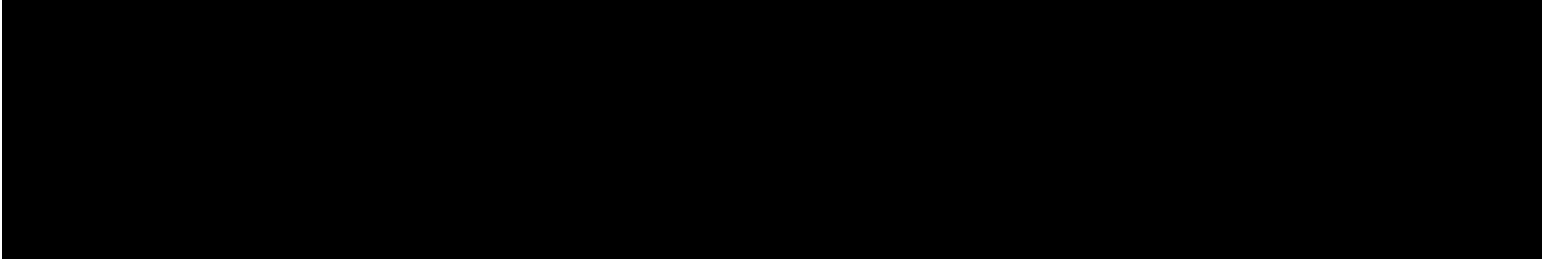
3. Benefit of rapid resolution of issues:

- The resolution of disputes at site level during the performance of the Contract by identifying and discussing issues with the DAB soon after they occur may prevent them from becoming disputes;
- The early resolution of issues thanks to the routine DB visits saves time and money by diminishing the need for specialist consultants and lawyers;
- As stated before, the DBs procedures take less time than the arbitration proceedings, which is advantageous for both parties, therefore the Parties may concentrate on completing the works instead of focusing their efforts on pointless battles;

- If an opinion/decision/recommendation is issued by the DB and accepted by the parties, it may enable payments to the contractor, thus easing the Contractor's cash-flow potential difficulties;
- Obtaining fair and timely justice through DB opinions/decisions/recommendations at a minimal expense of time, money and project resources helps to progress the Works in the most expeditious and cost effective manner. Unsolved disputes slow down the Contractor's progress and enthusiasm in the project and directly affect work performance and cash flow.

4. Contractor's preference for DB recommendation or decision:

- The DB's recommendation may be implemented if the Party who must take action decides in this way; it will become final and binding if the Parties will not raise any objections within the period of time stated in the Contract/Dispute Adjudication Agreement (DAA);
- The DB's decision has to be implemented; it will become final and binding if the Parties will not issue a notice of dissatisfaction within the period of time stated in the Contract/DAA;
- Both the recommendation and the decision may be used as the basis for negotiating a settlement agreement;
- When the DB issues a recommendation, if a notice of dissatisfaction is issued by either of the parties, they may voluntarily comply with the Recommendation but they are not bound to do so;
- When the DB issues a decision, if a notice of dissatisfaction is issued by the parties, they remain contractually bound to comply with the Decision unless and until a settlement agreement is reached or the arbitral tribunal or the court rules otherwise;

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- The author's experience is that the Contractors are interested in having the matter resolved in a final and binding manner.