



Underground
Construction
Association

A Division of SME

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The State of DRB's in the Tunnel Industry

Authors

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**The paper in the proceedings documents the Panel Discussion given at RETC 2021 in Las Vegas;
This presentation focuses on the Industry Survey.**

This paper and presentation are in collaboration with The Dispute Resolution Board Foundation, stemming from the collaborative agreement with the UCA.



Today's Presenters

Joe has over 36 years of experience in heavy civil construction including several tunnel contracts. For the underground work Joe has served the Owner in various roles including Resident Engineer and Executive Project Director. Joe has spent the last 24 years at Sound Transit. Joe is an active member of the Dispute Resolution Board Foundation (DRBF) and has served on their Board including Region 1 President (North America) in 2018-19.



Joe Gildner, Sound Transit,
on behalf of the Owners



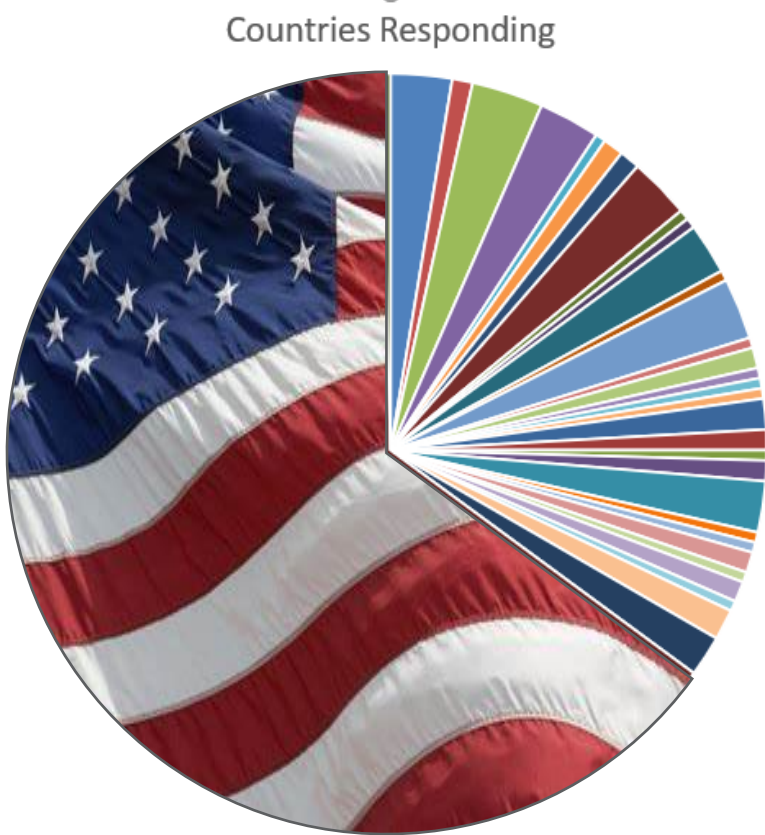
Mike Roach, Traylor Brothers,
on behalf of the Contractors

Mike has over 42 years of experience in the tunnel construction business, serving in various capacities from miner to Project Manager throughout the successful procurement and construction of over twenty projects. A 35-year veteran with Traylor Bros., Inc., he has extensive experience with projects ranging from water, wastewater, mass transit and railway tunnels throughout North America. Mike currently serves as the Chief Engineer & Estimator for the company's Underground Division.



A Good Response-

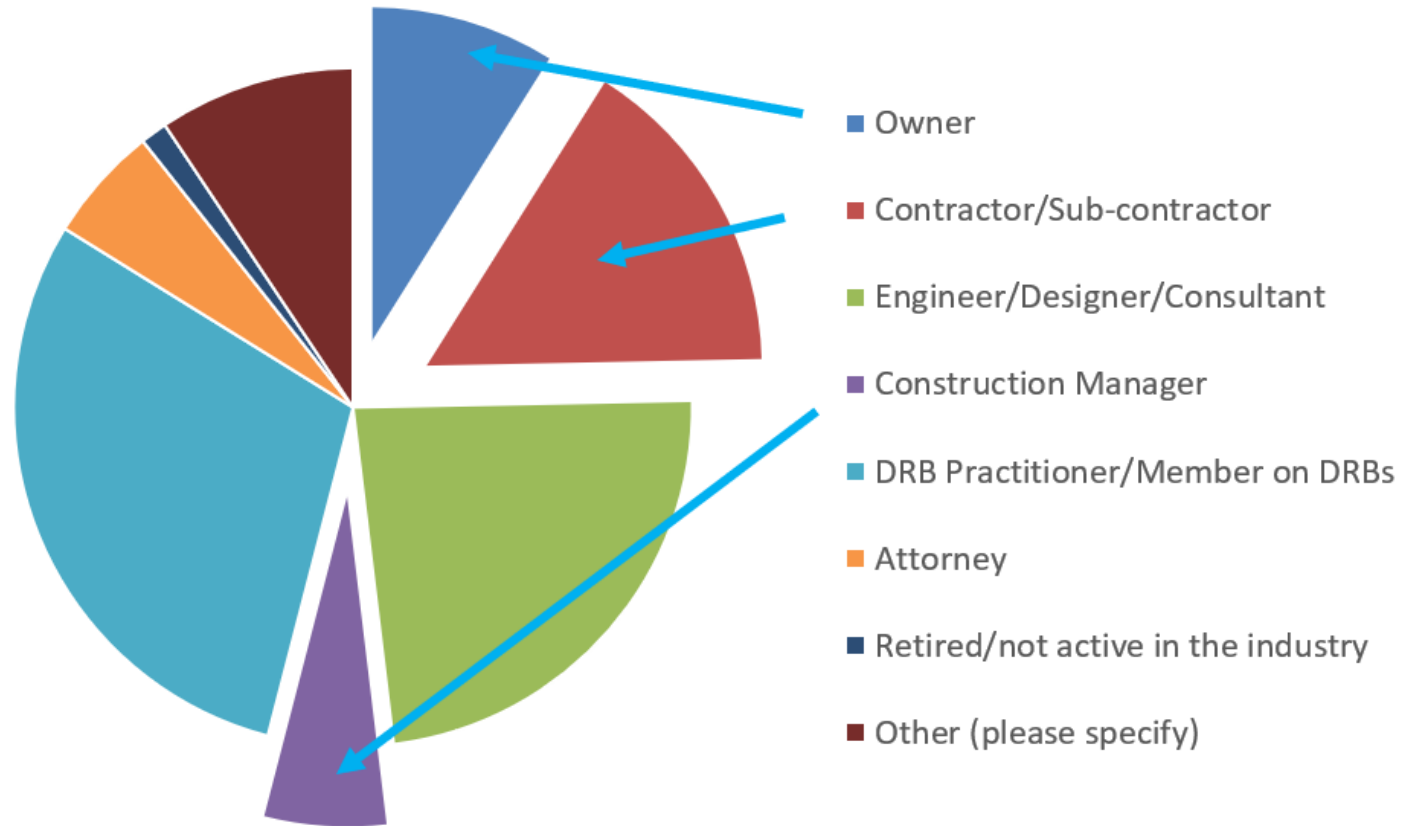
(242 Total Responses in 33 countries)



- | | | | | |
|----------------|---------------|-------------|-----------------|--------------|
| Australia | Botswana | Brazil | Canada | Columbia |
| Costa Rica | Egypt | France | Germany | Iceland |
| India | Indonesia | Italy | Montenegro | New Zealand |
| Pakistan | Panamá | Perú | Philippines | Poland |
| Portugal | Qatar | Romania | Serbia | South Africa |
| Sri Lanka | Sweden | Switzerland | The Netherlands | Turkey |
| United Kingdom | Unites States | Uruguay | | |



Respondents



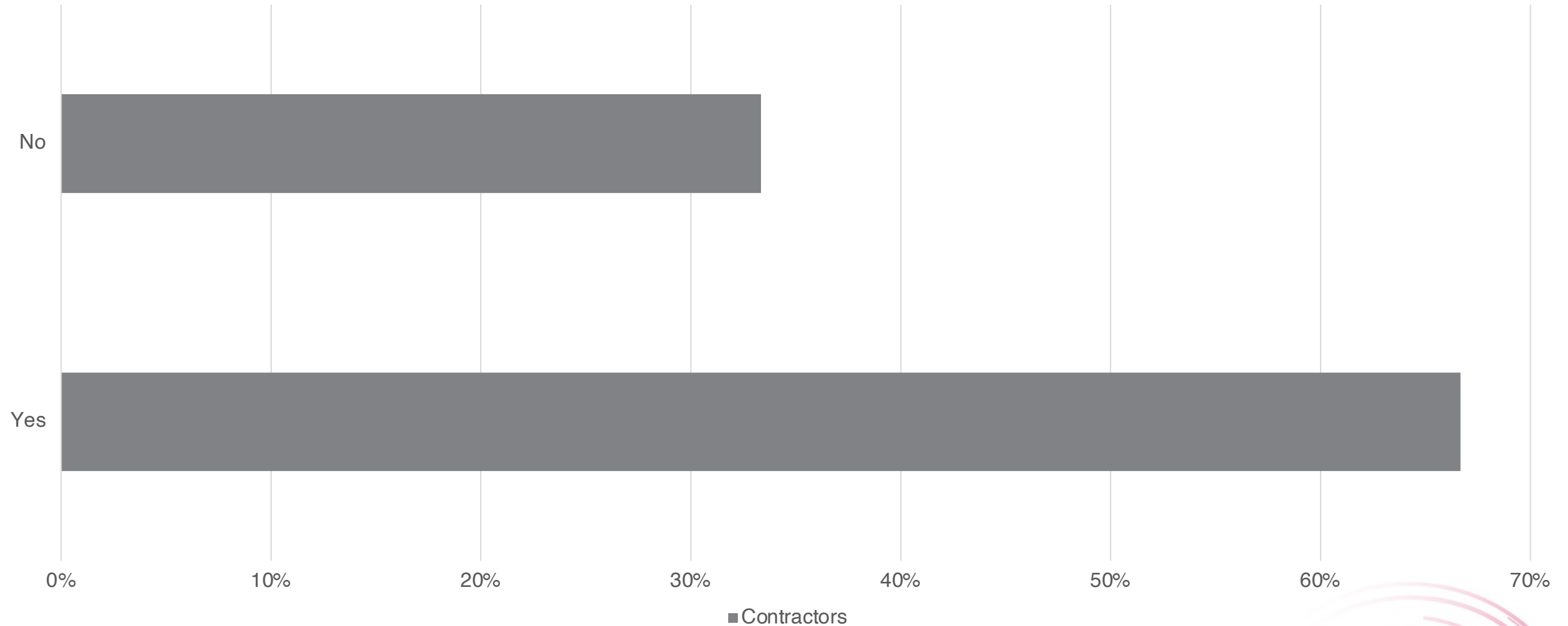
... and a Good Cross-section



...today we are focusing on Owners' and Contractors' responses.



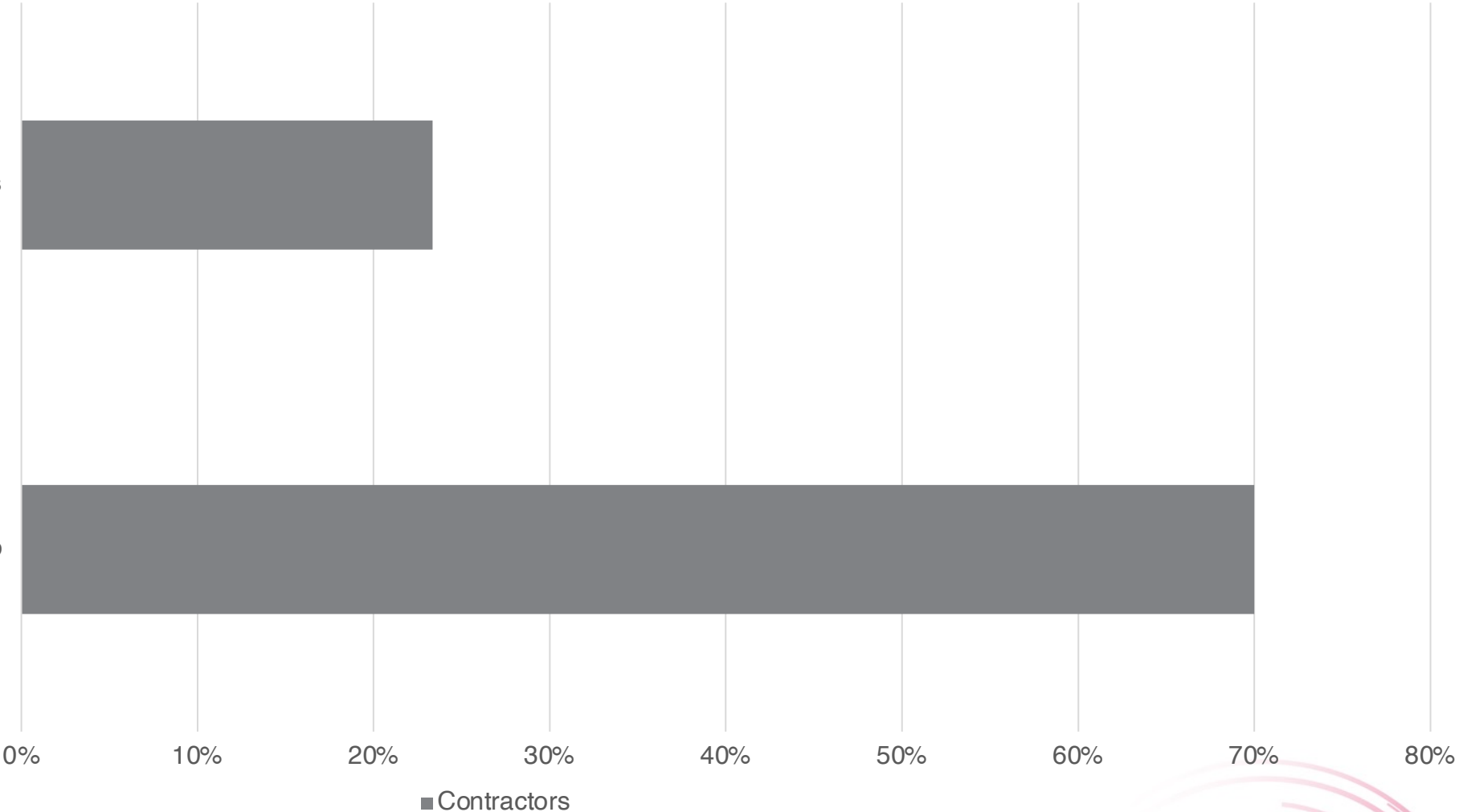
Does inclusion of a DRB provision in the contract affect your willingness to bid on a project?



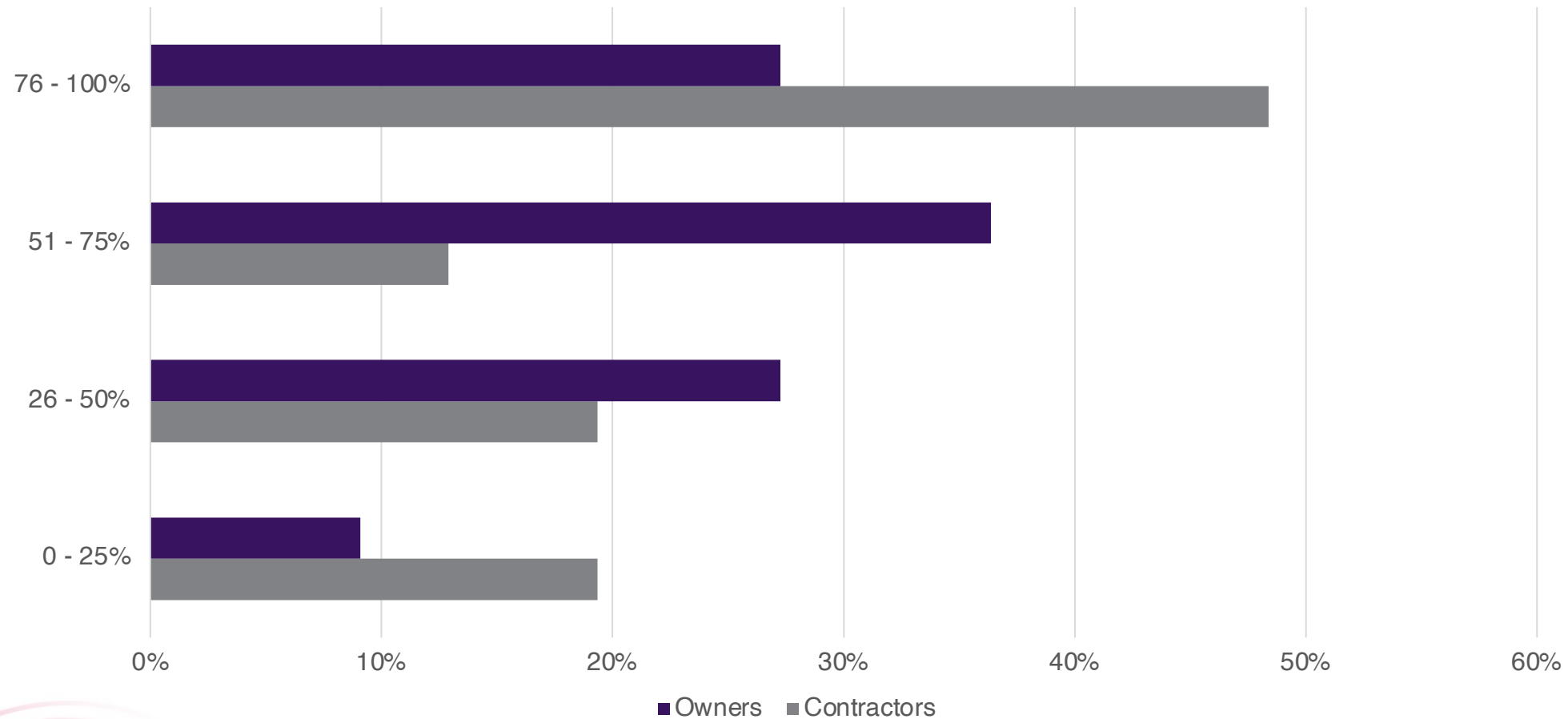
Does inclusion of a DRB provision in the contract affect your bid price?

Yes, lower risk contingency and lower bids

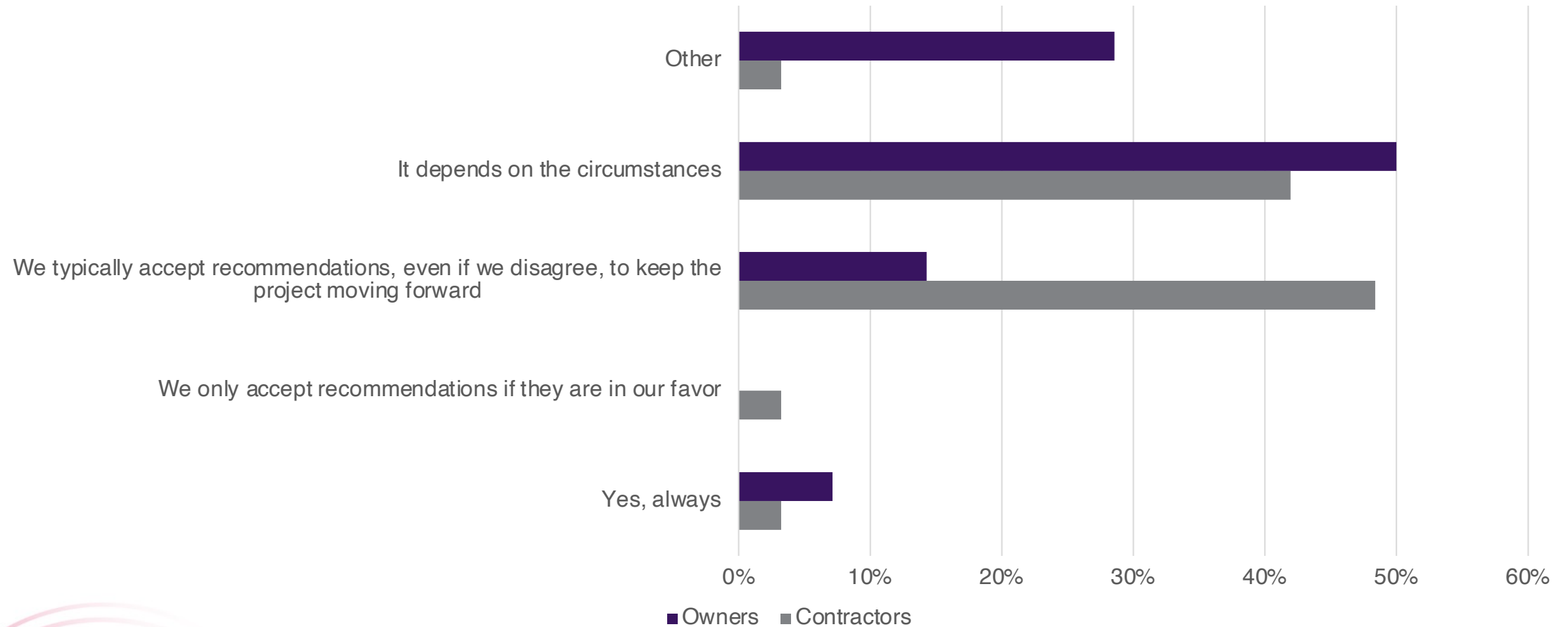
No



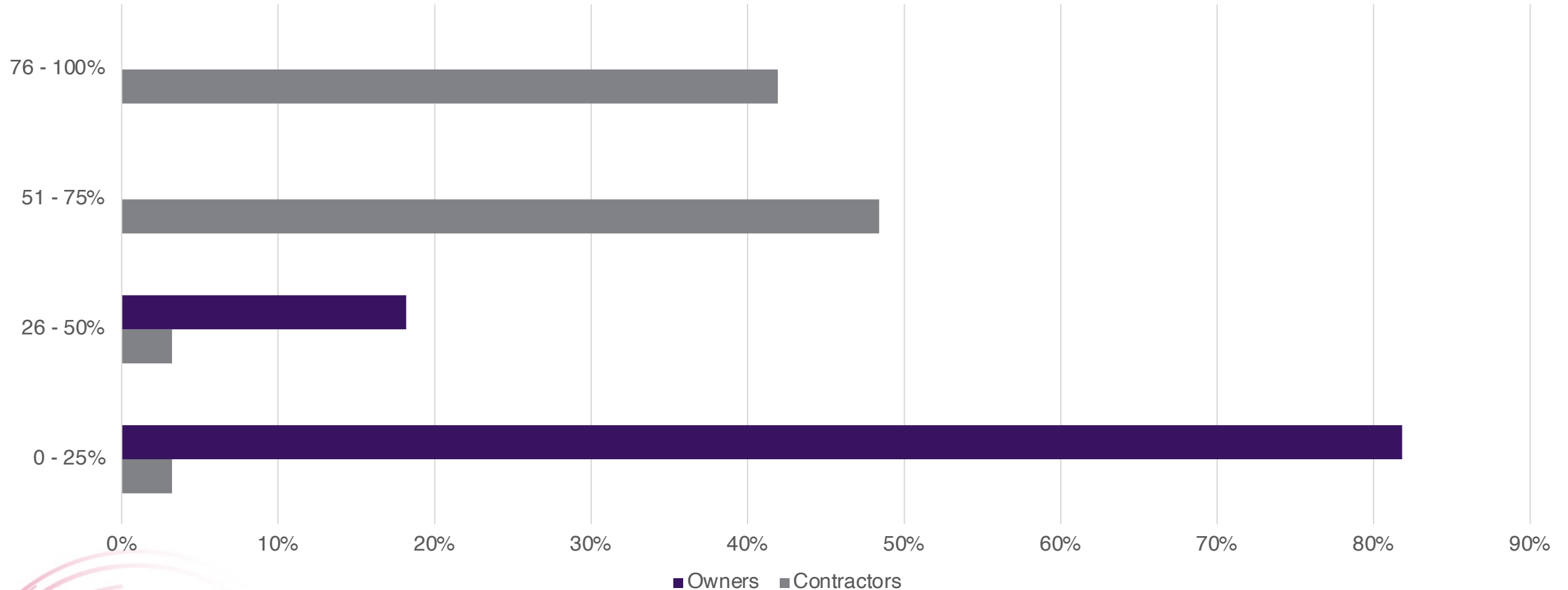
Of the DRB hearings you have been involved with, how many would you estimate resulted in a favorable recommendation?



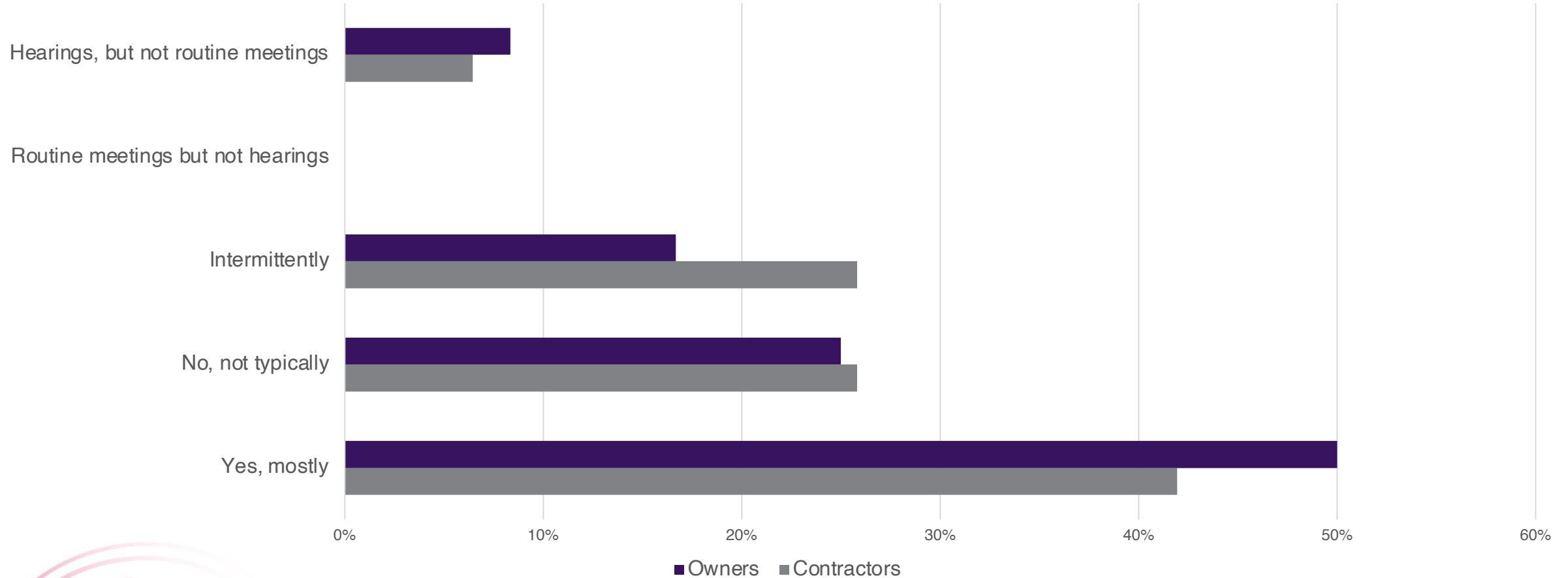
Does your organization typically accept a DRB recommendation regardless of outcome?



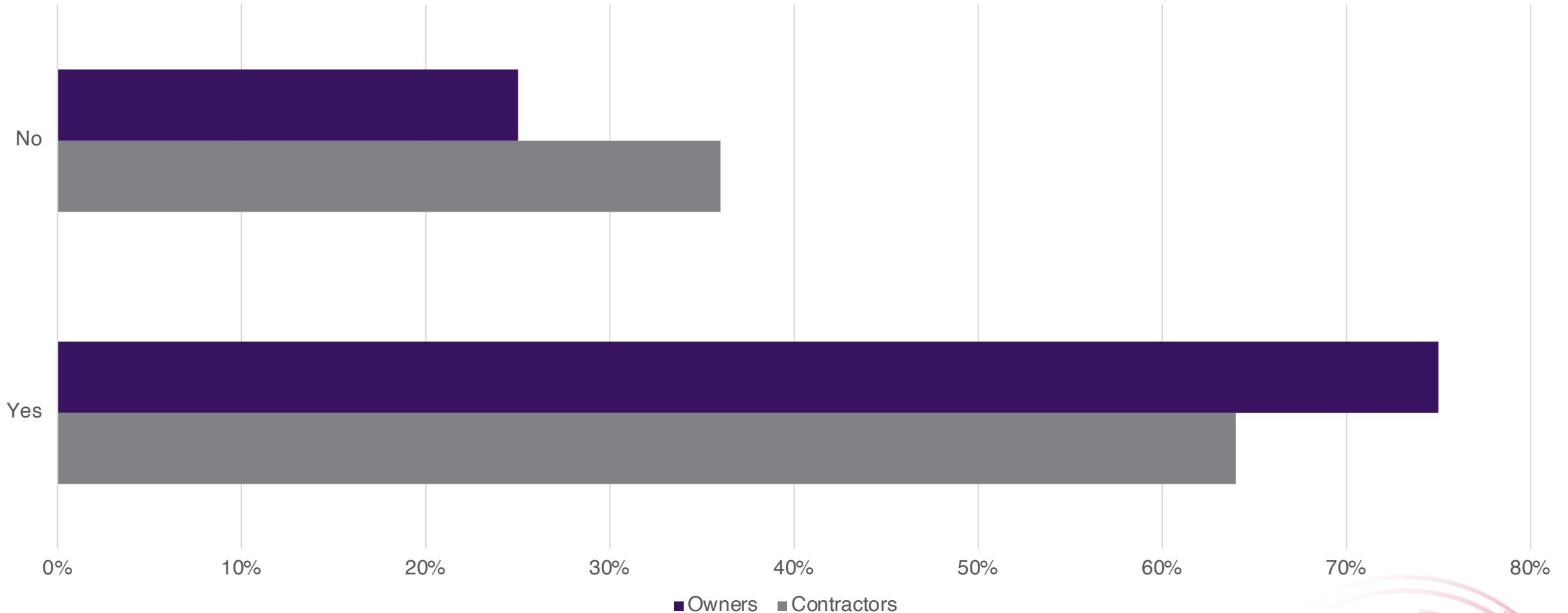
Of the total number of DRB hearings you have been involved with, what percentage would you estimate were brought forth to subsequent proceedings (e.g. mediation, arbitration, or litigation)?



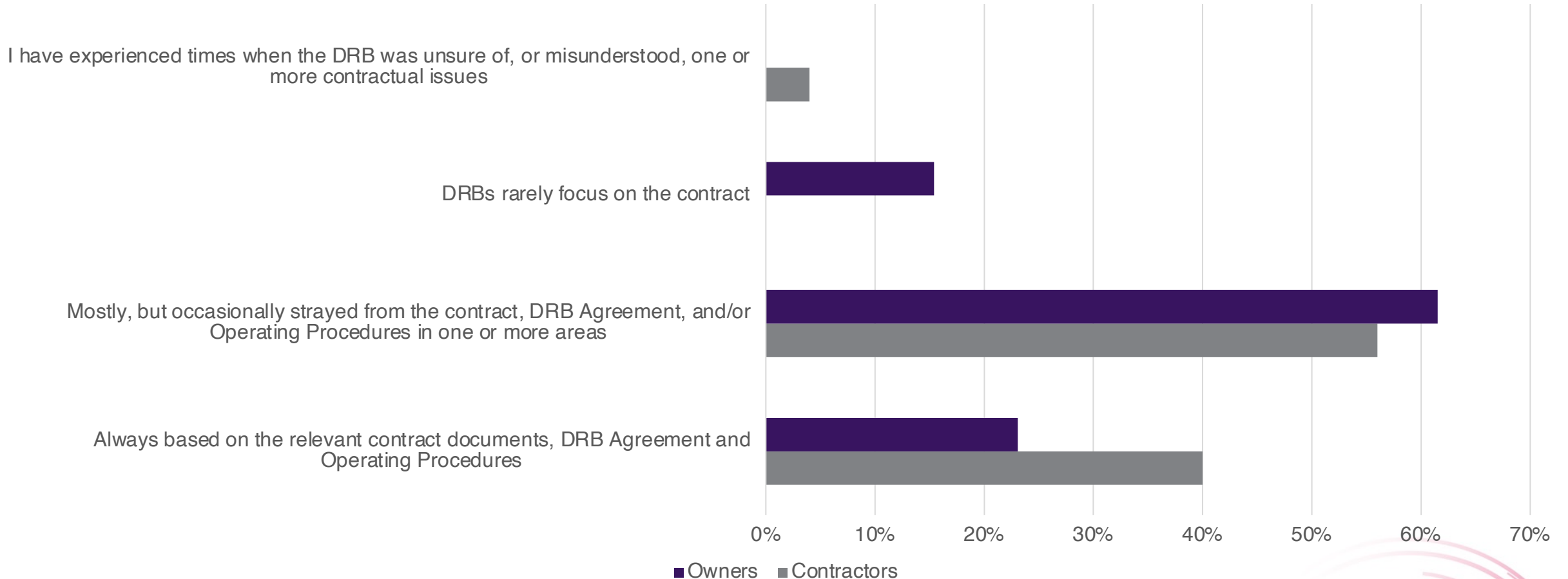
Are your organization's decision makers (the ones who decide to accept or reject a DRB recommendation) typically present at the routine DRB meetings and hearings?



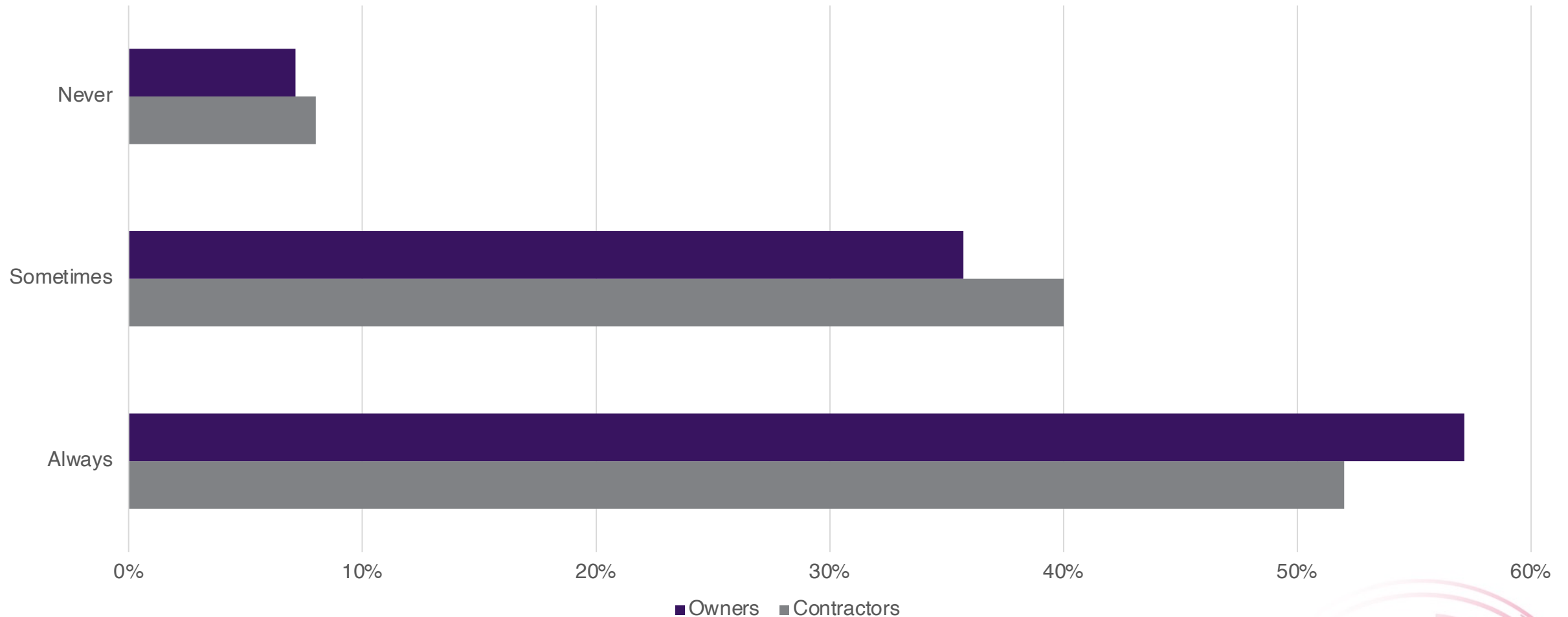
Do you believe DRBs reduce the amount of "spurious" or minor claims merely by the existence of the DRB?



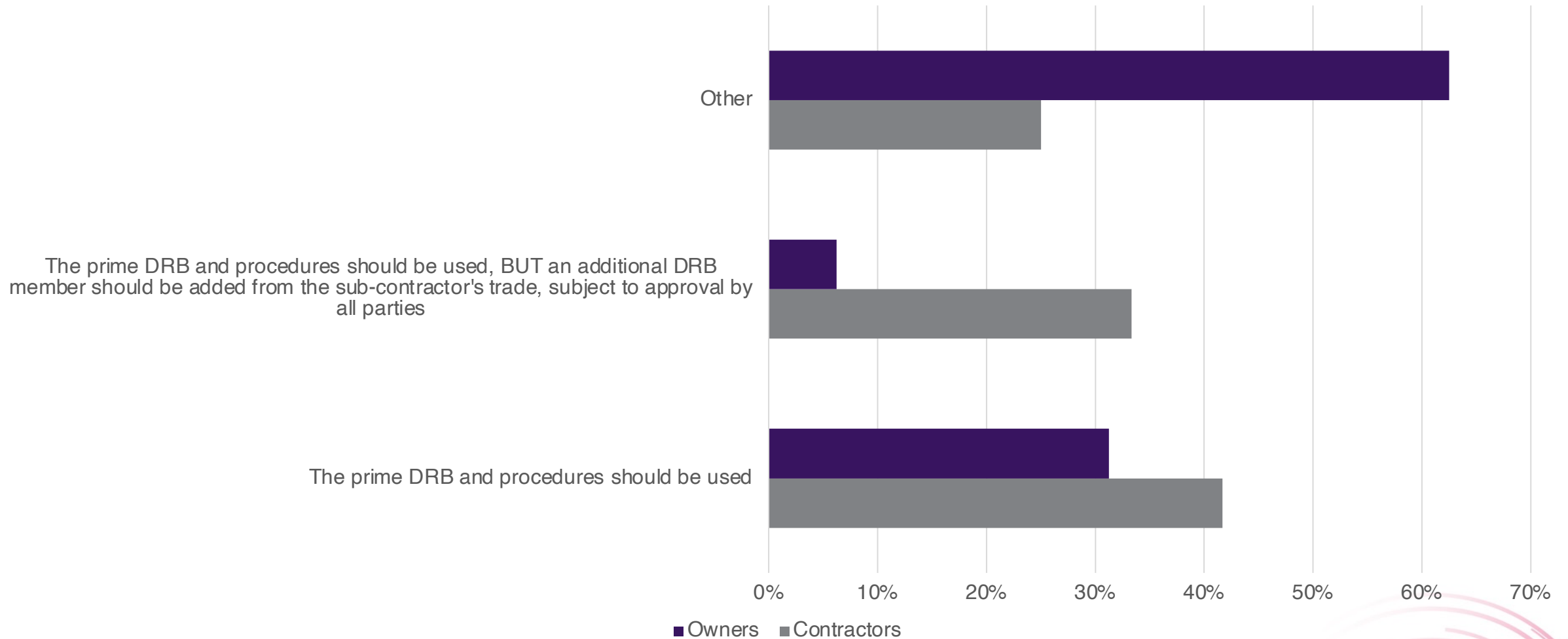
Have your DRBs provided recommendations in accordance with the contract, or have provided recommendations based on what they believe to be 'fair and equitable' or 'whatever is needed to resolve the issue'?



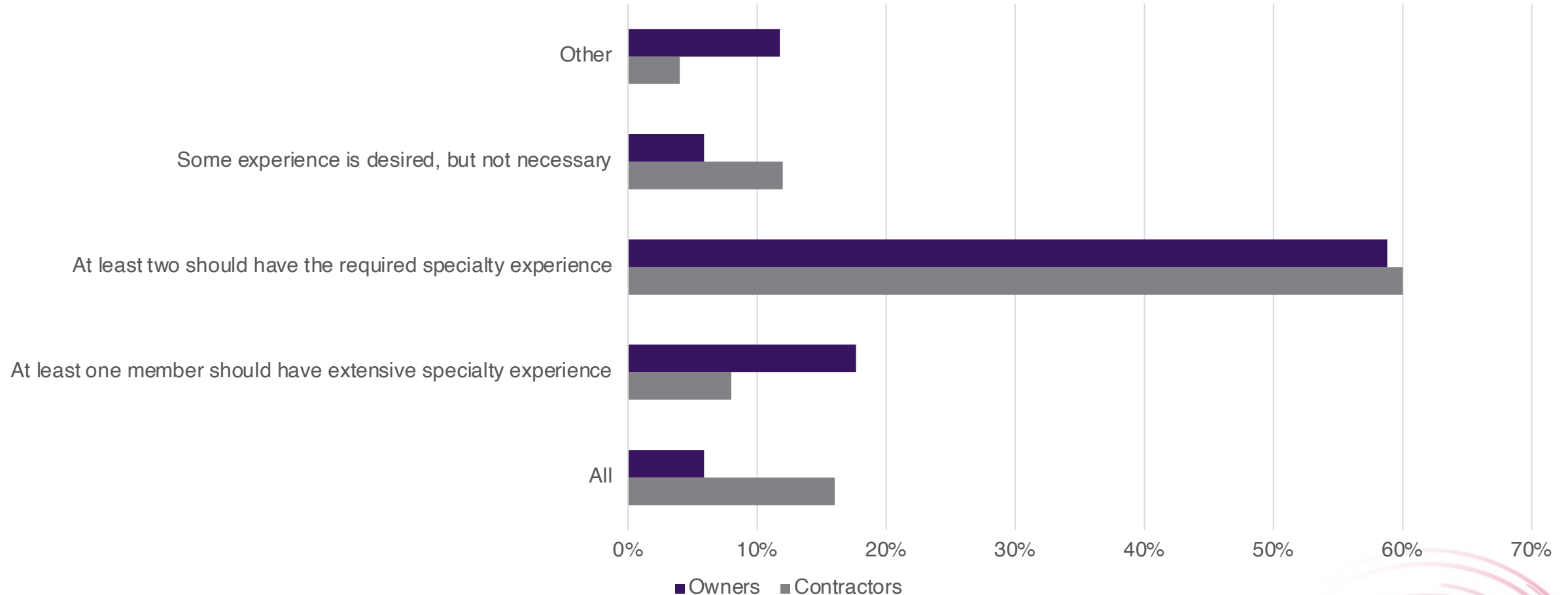
Have your DRBs been instructed to strictly follow the terms of the contract when setting out guidelines for meetings and hearings?



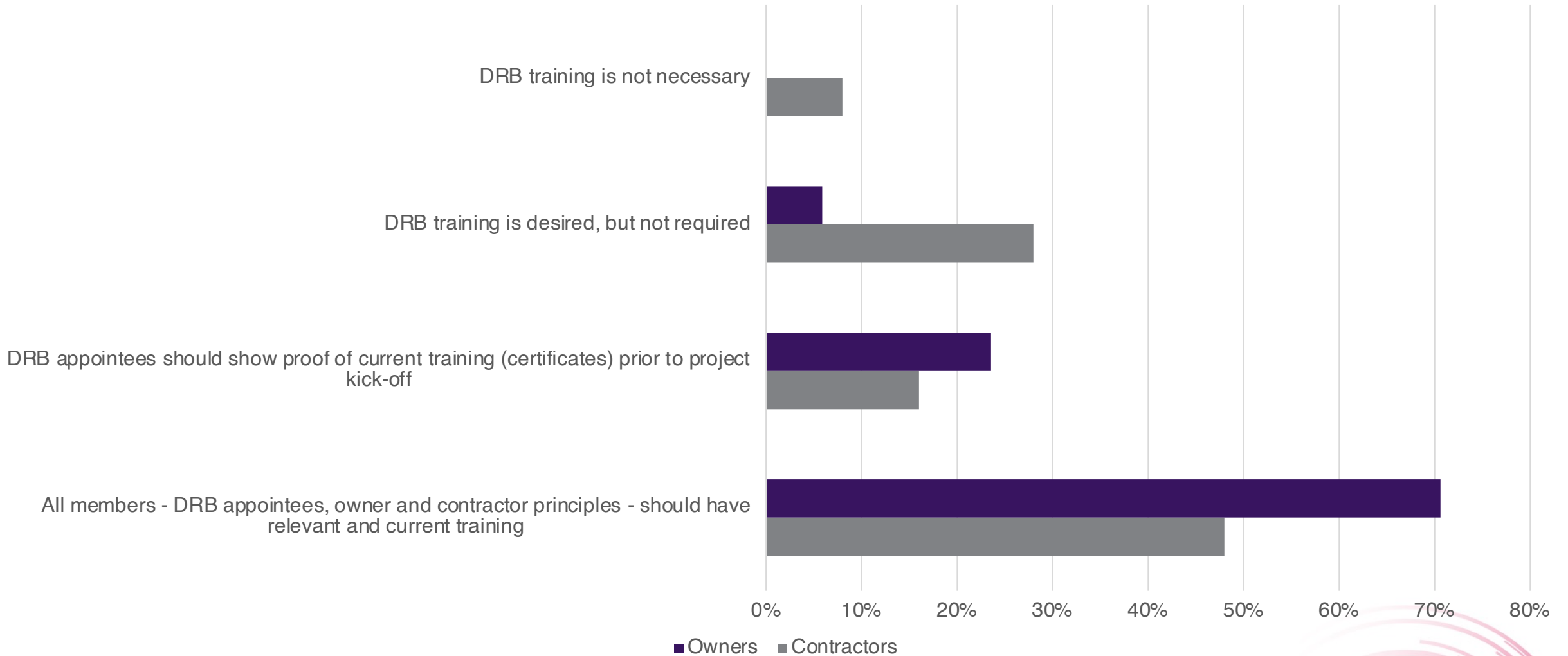
How should disputes between and contractor and sub-contractor be handled?



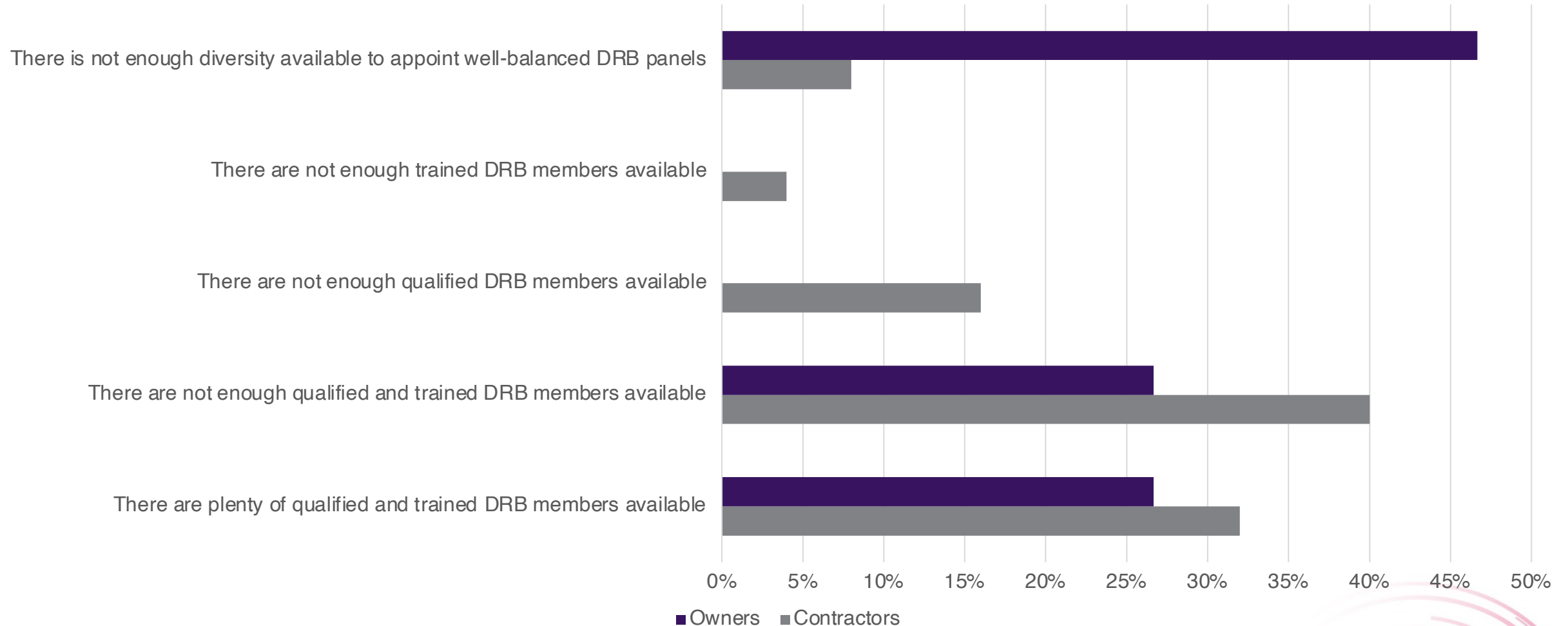
On a 3-member DRB, how many members should have specific experience with the planned type of project (such as heavy construction experience as a contractor, or geotechnical design experience for a transit project)?



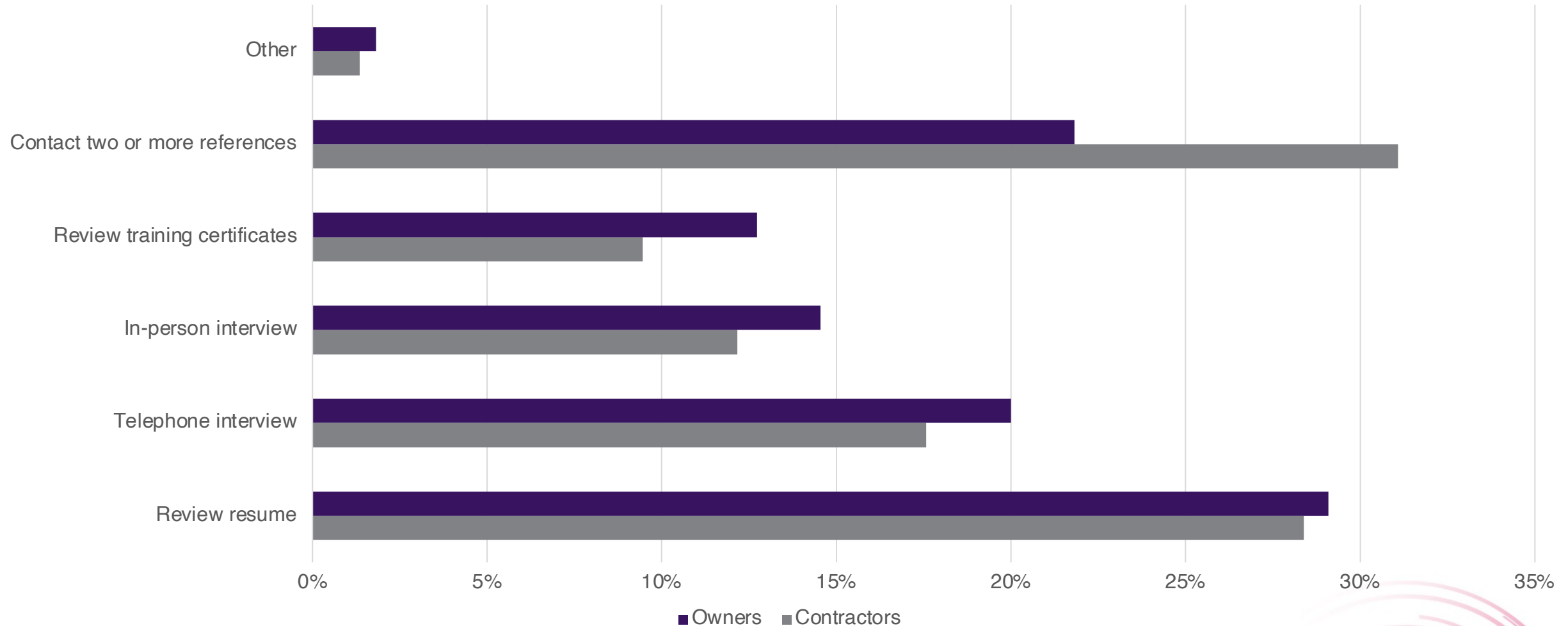
How important is training in DRB processes and procedures?



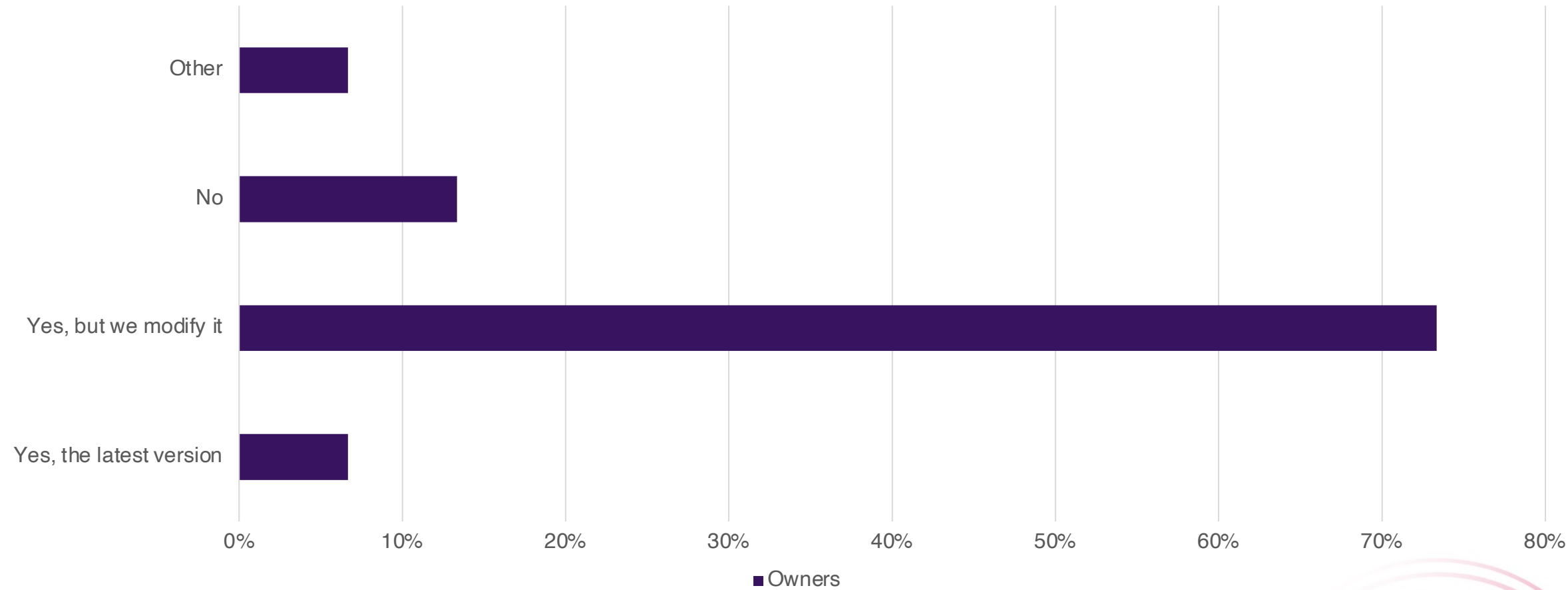
How satisfied are you with the available pool of impartial, experienced, and trained DRB candidates?



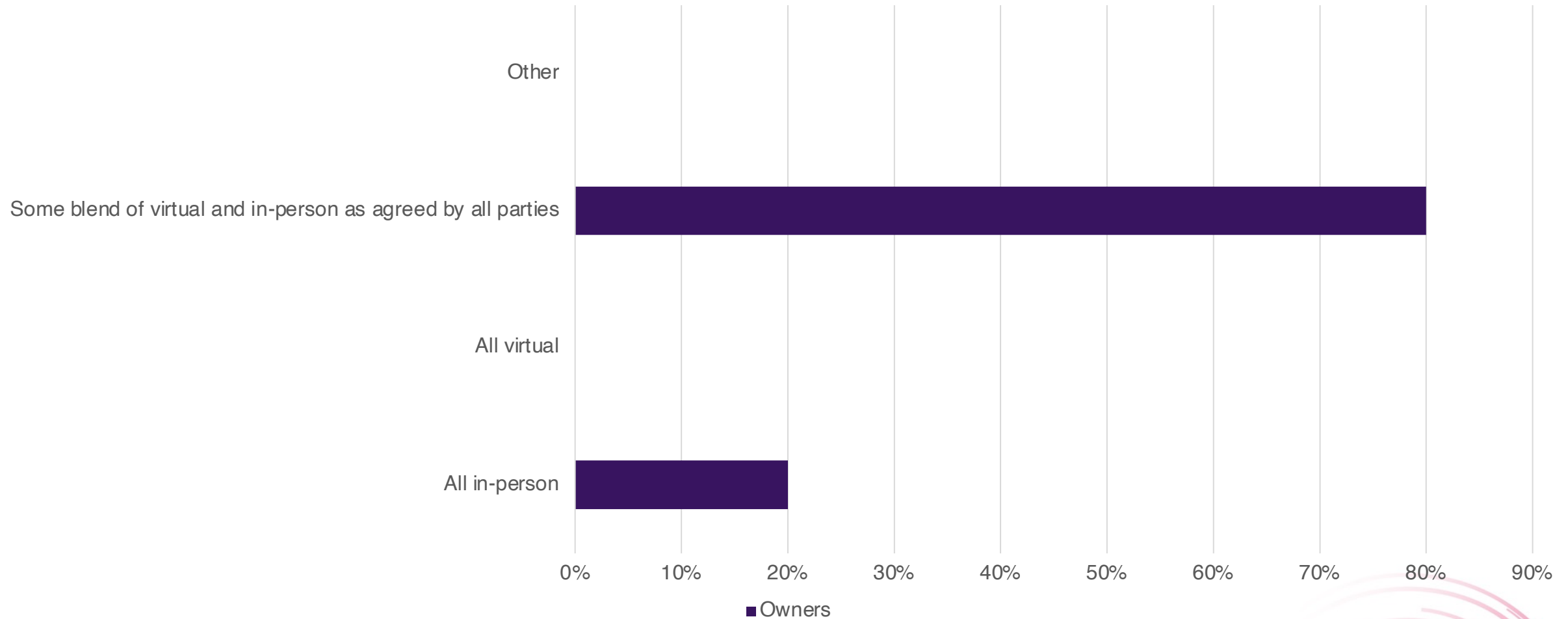
How should DRB members be evaluated for impartiality, experience and training? (check all that apply)



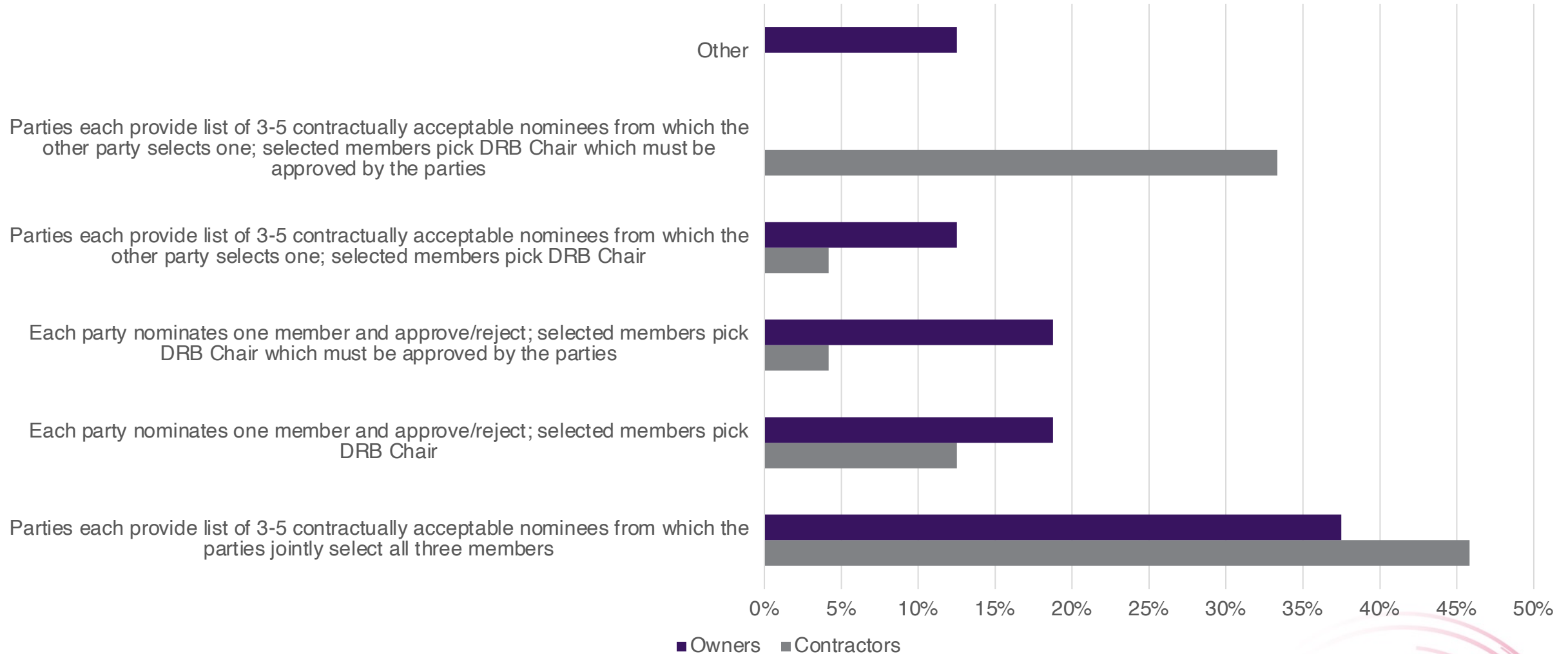
Does your agency/department use the latest DRBF recommended documents such as DRB Agreement (formerly third-party agreement) and Operating Procedures?



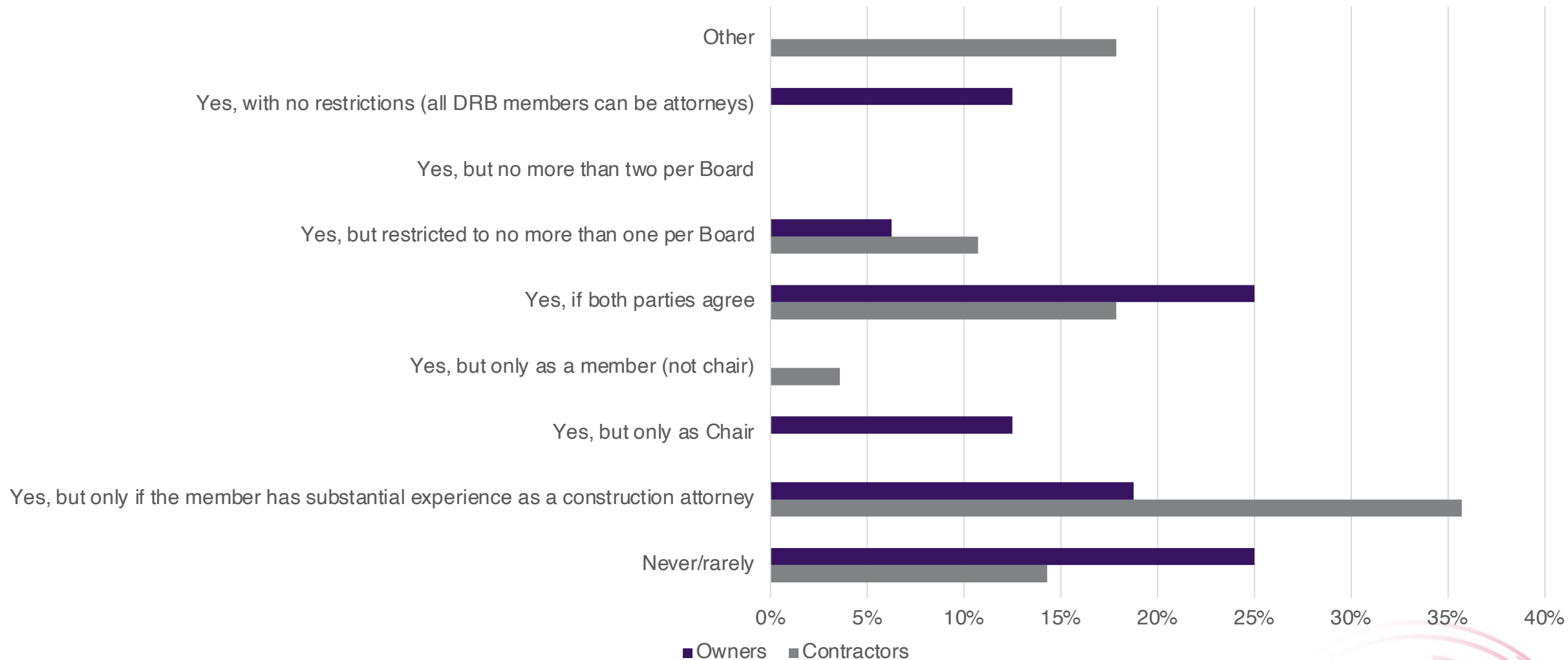
As COVID wanes, will you be returning to in-person DRB meetings, staying virtual, or some combination?



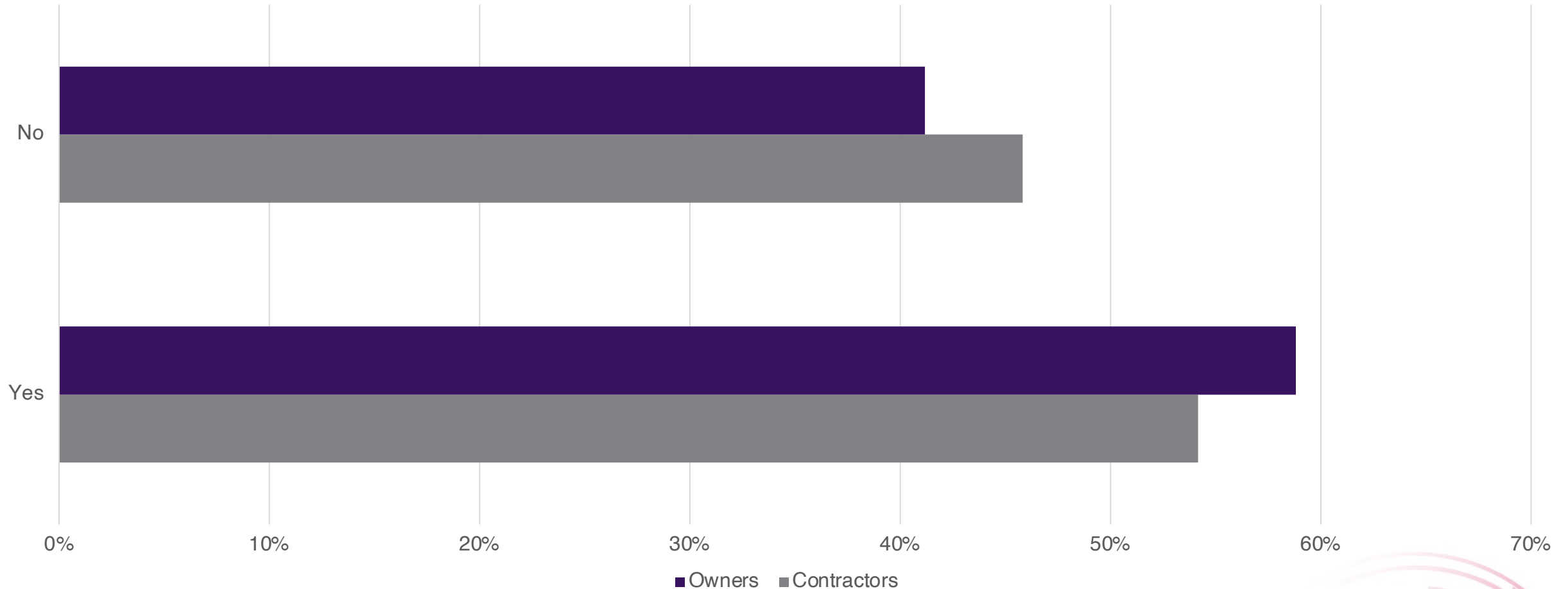
What do you consider the best method for DRB member selection?



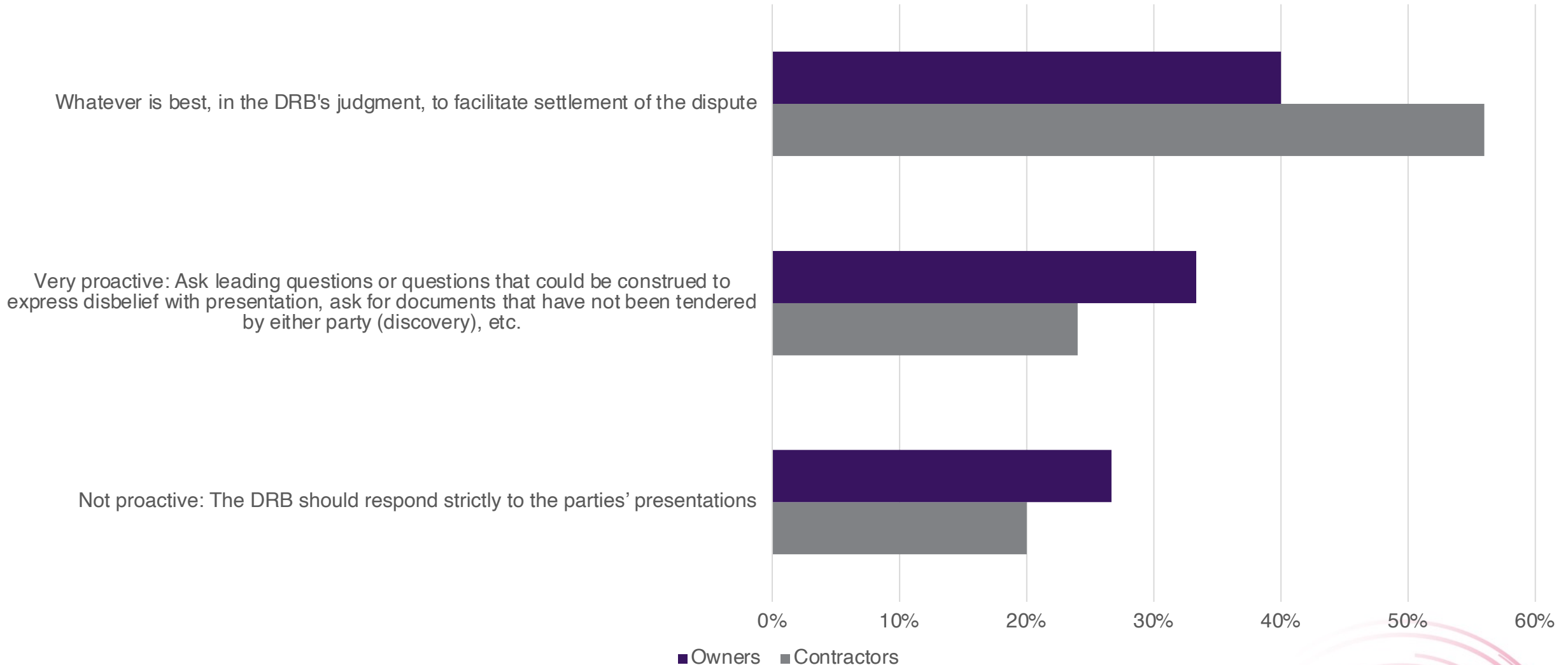
Should attorneys be allowed to serve as DRB members?



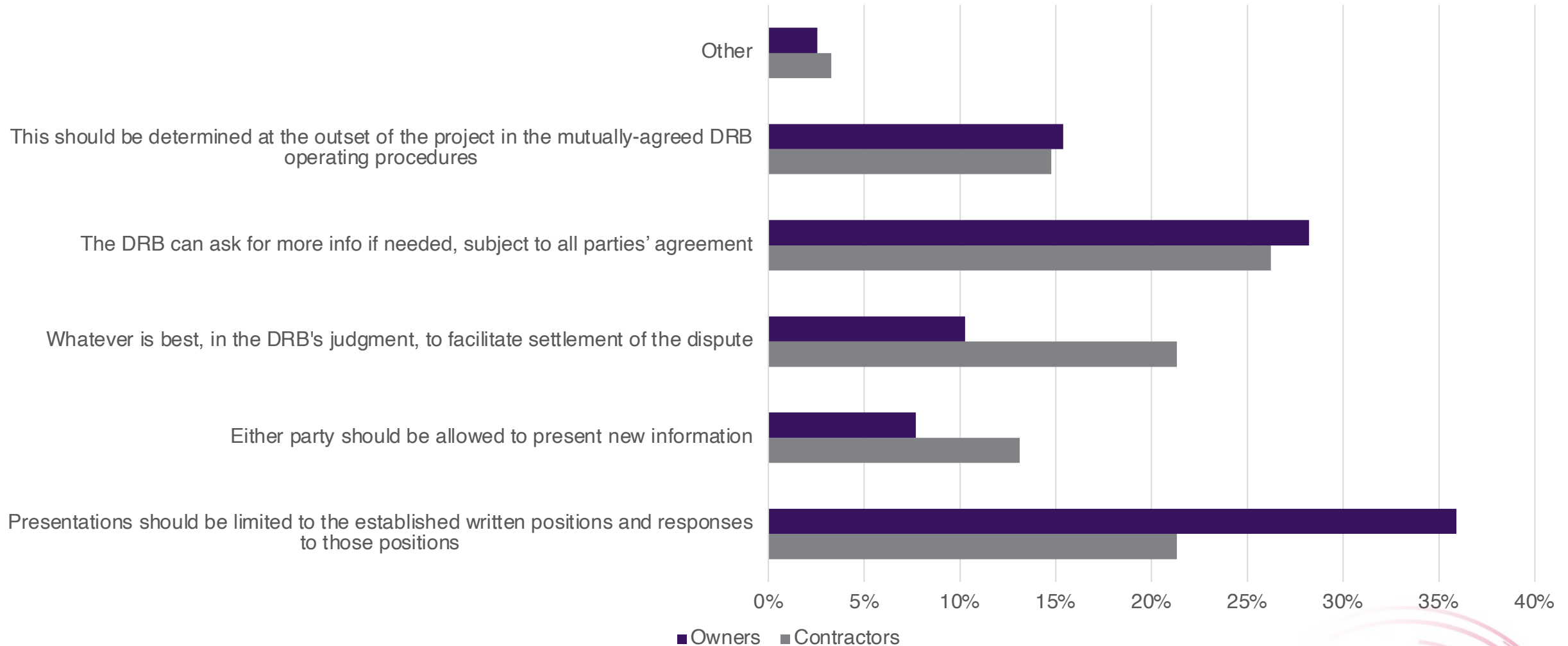
Do you believe an individual should be limited to the number of DRBs they serve on concurrently, in order to ensure availability for meetings and hearings?



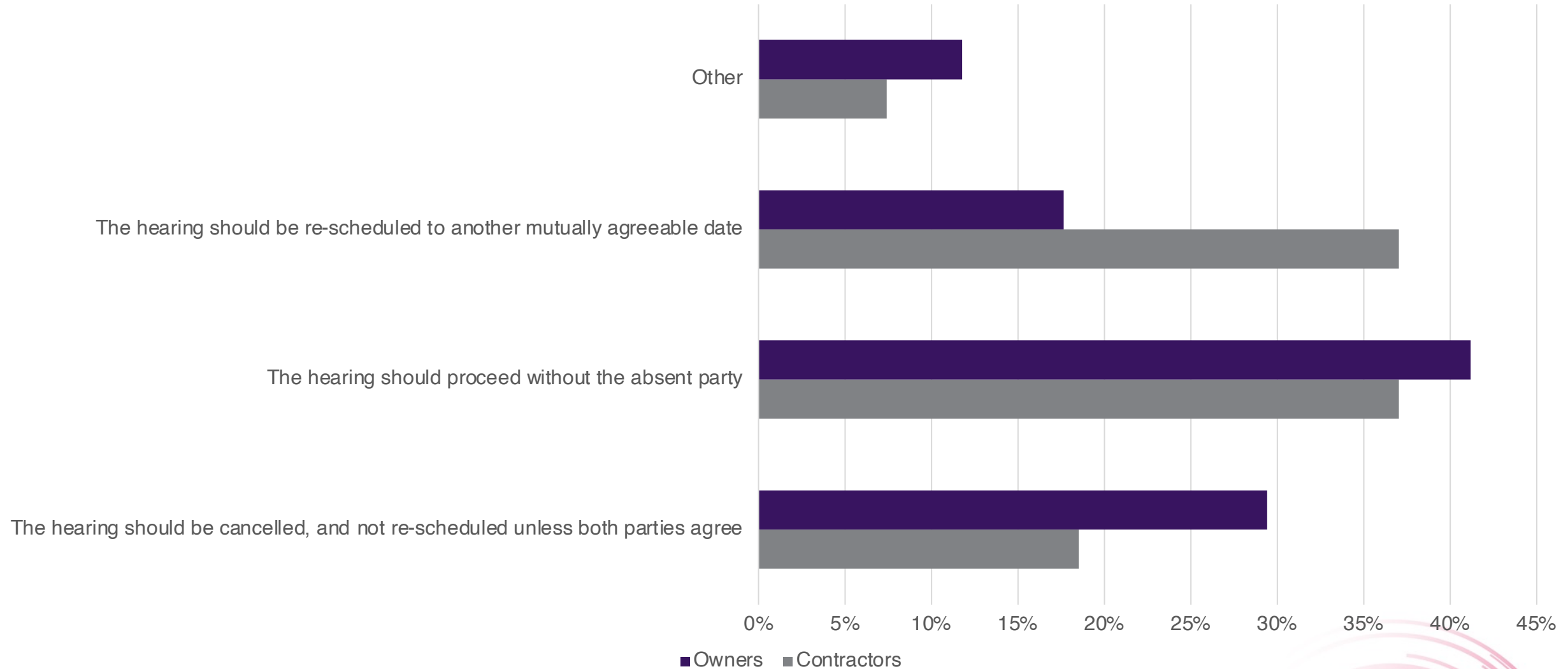
How proactive should the DRB be in hearings?



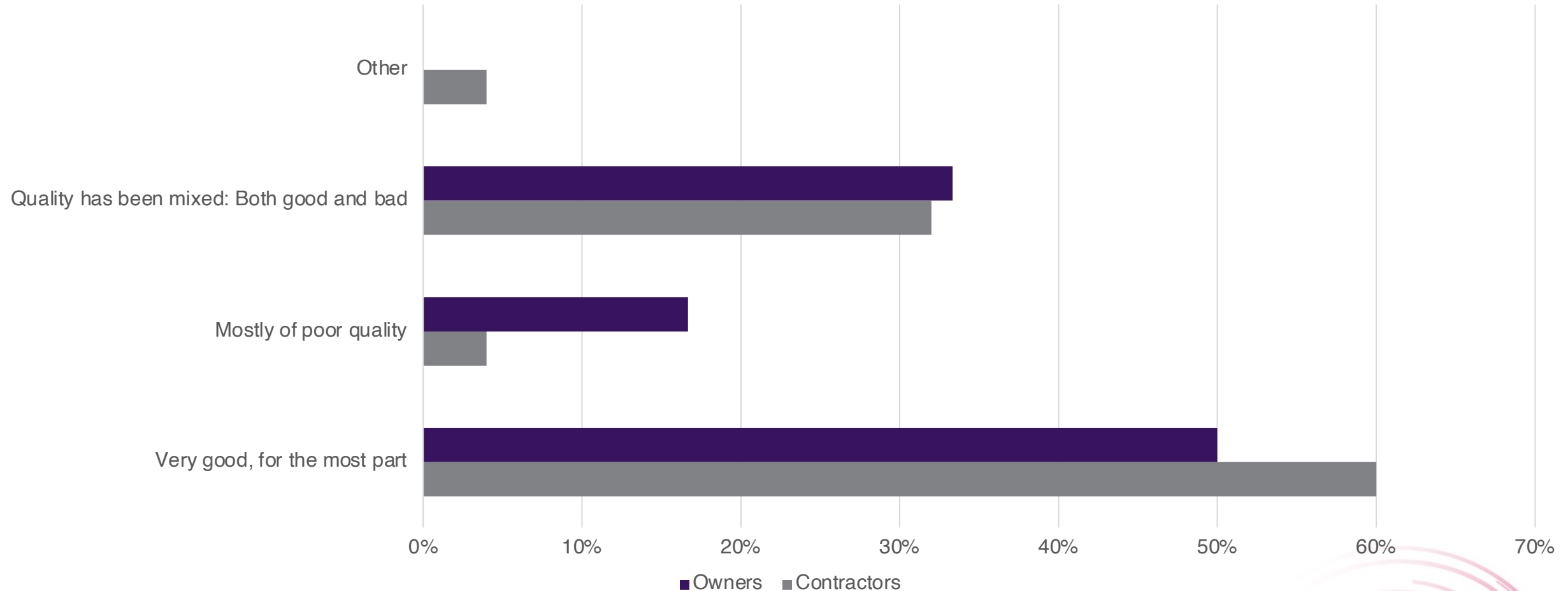
What material should be presented at a hearing? (mark all that apply)?



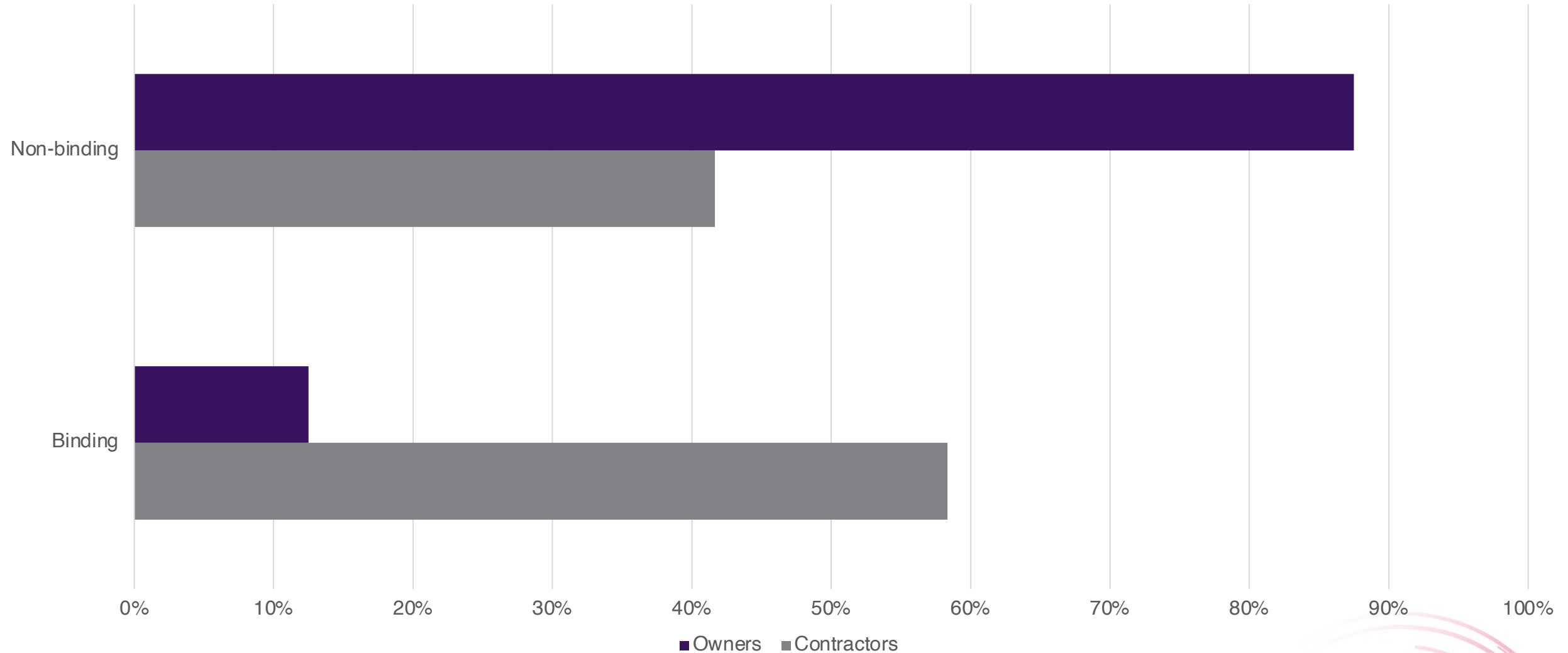
If one party refuses to show up or participate at a hearing:



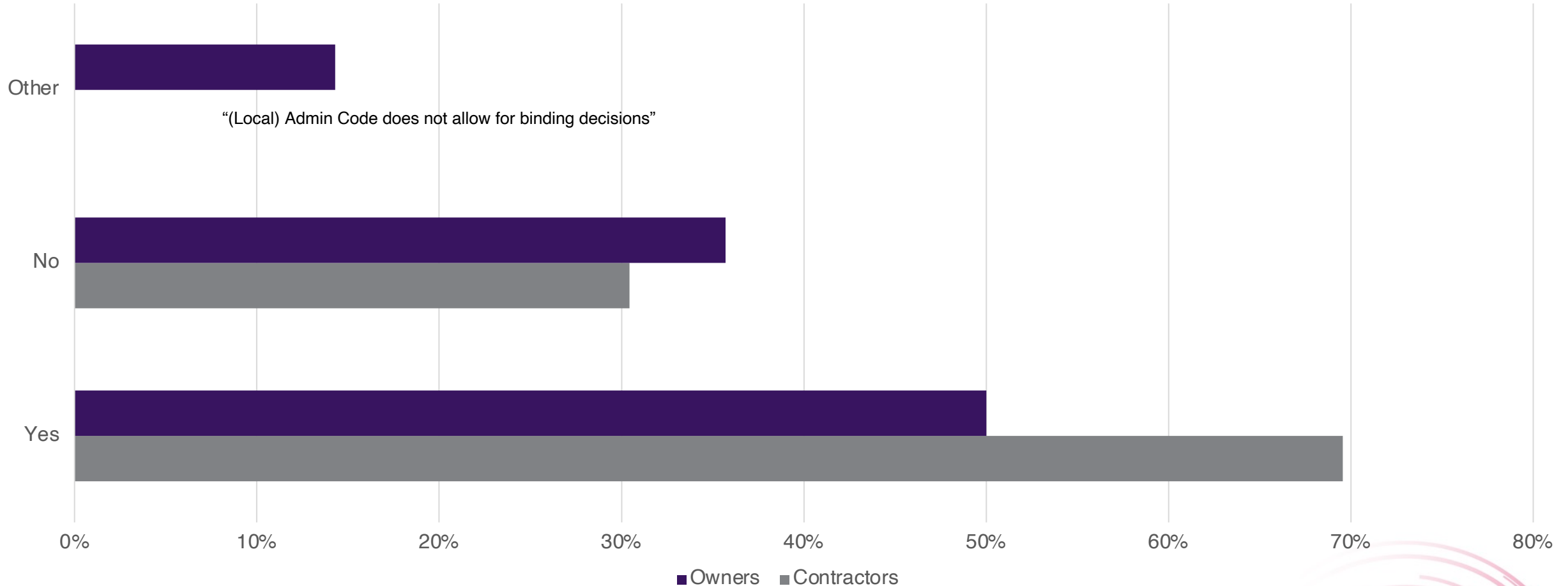
What has been your experience with the quality of the written DRB recommendations (emphasis on the Finding of Facts that support the recommendation)?



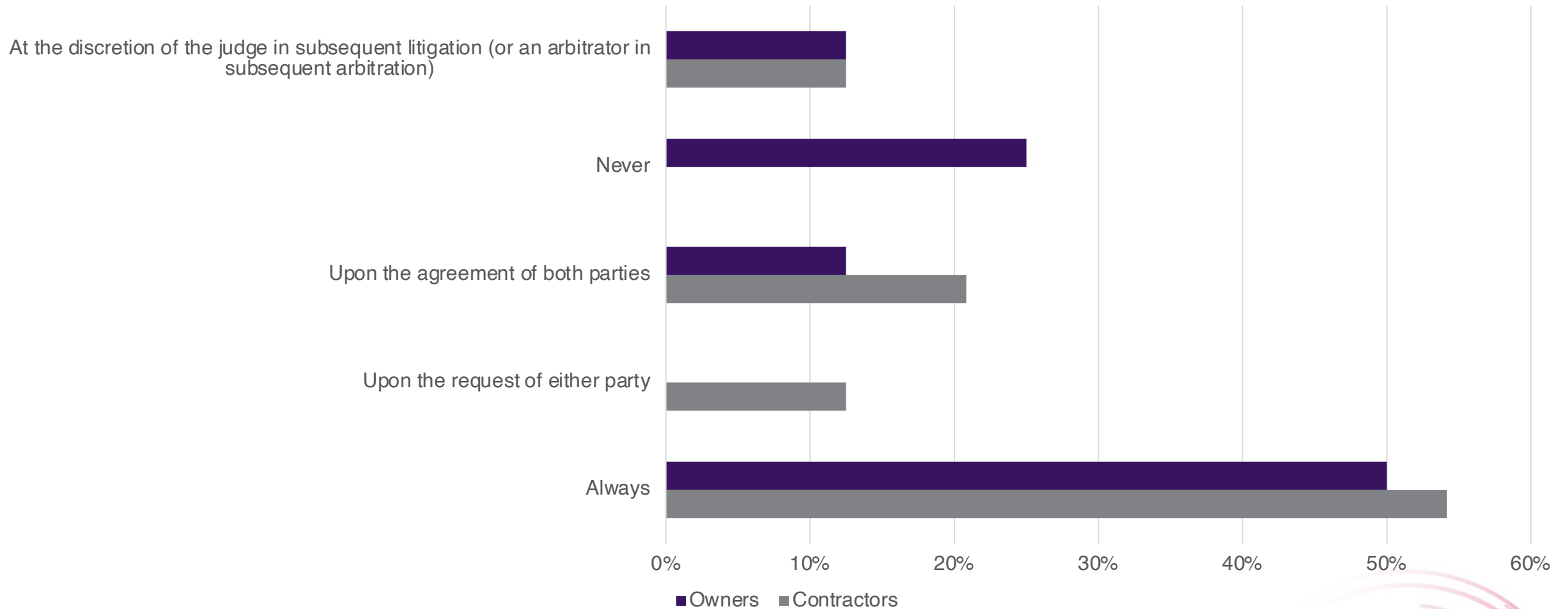
Do you believe DRB decisions should be binding or non-binding?



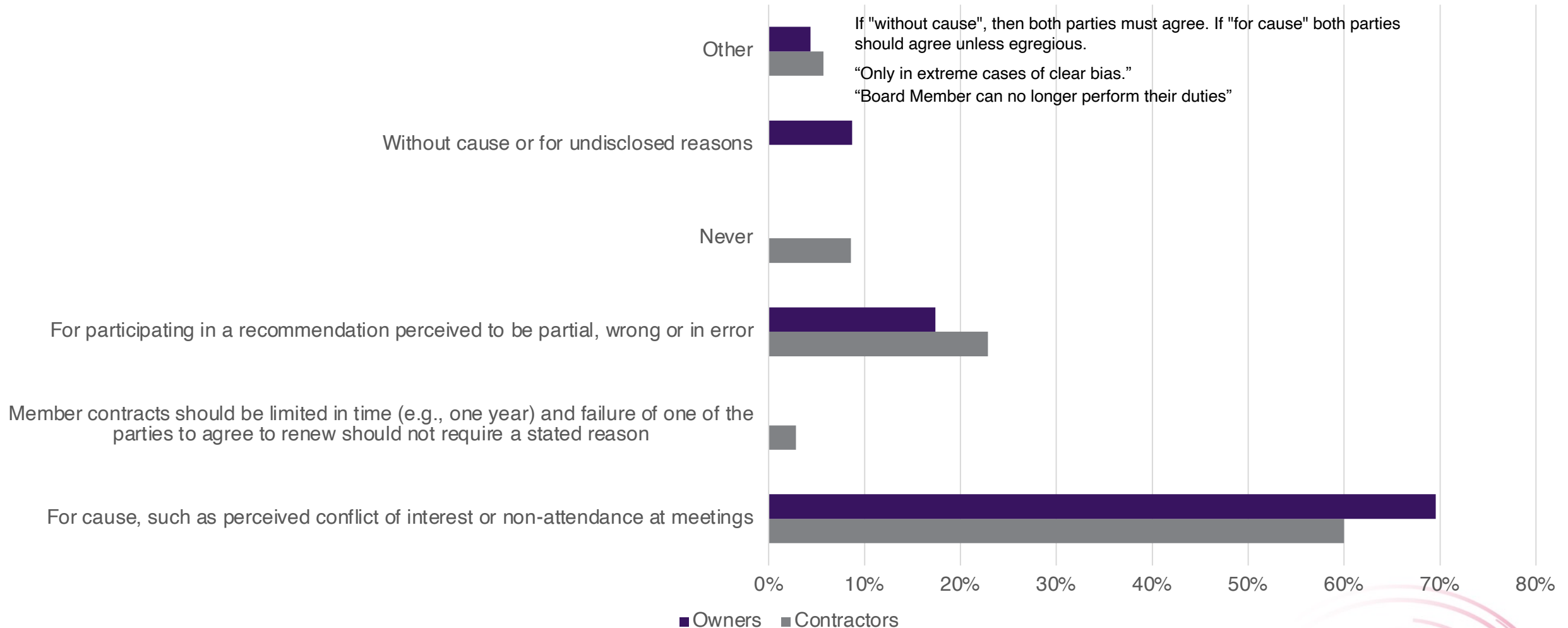
In the case of a binding decision, do you believe either party should have a right to protest and invoke other mediation or arbitration (other than litigation)?



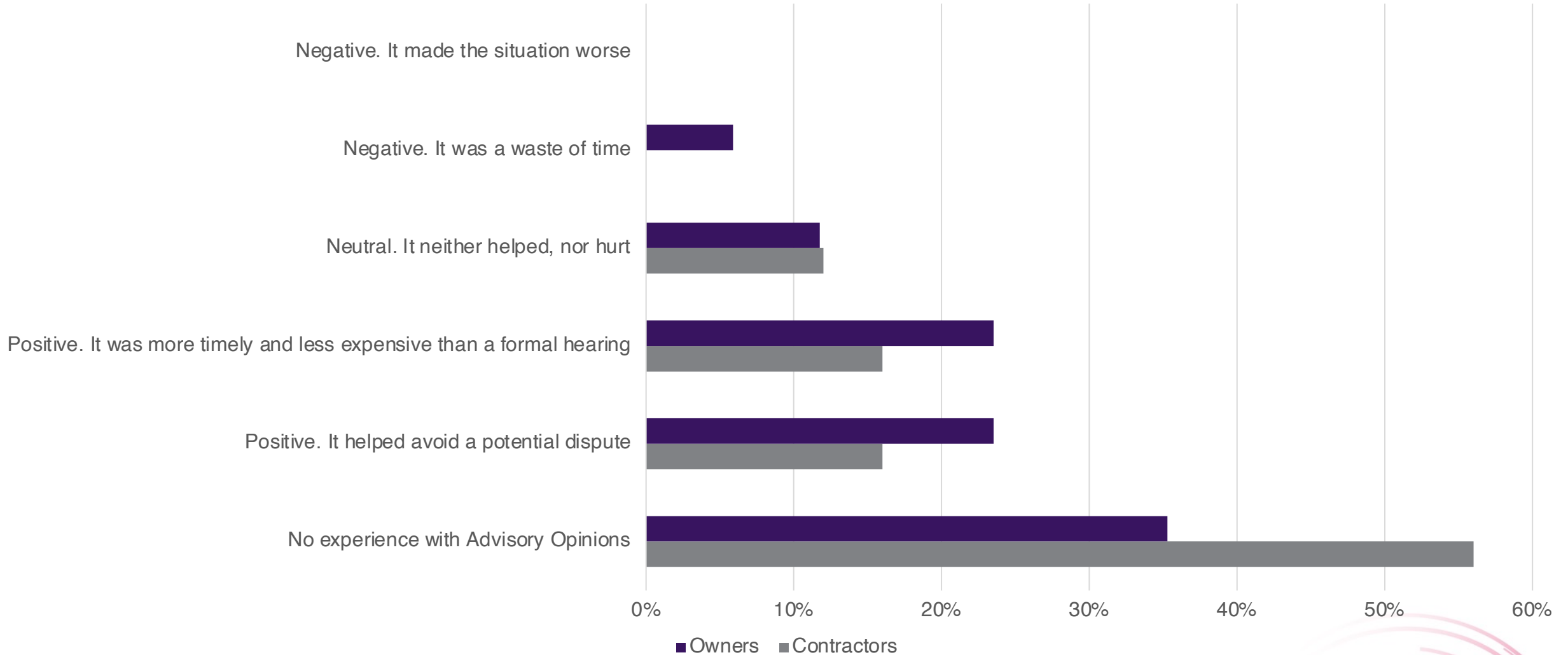
When should DRB recommendations be admissible in subsequent dispute resolution/litigation?



Under what circumstances should either party have the ability to terminate a Board member? (mark all that apply)



What has been your experience with Advisory Opinions? (mark all that apply)



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Full survey results will be available on both the UCA of SME and DRBF websites.

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