



09 DECEMBER 2022

# DRBF THE HAGUE REGIONAL CONFERENCE

# A View from Above - Learning from DBs in the Nordics

## Norway



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# Dispute resolution/boards

- Ordinary courts
  - Mediation in the courts (first and appeal court)
- Arbitration
  - Ad hoc/Institutional
  - Noma
- **Dispute boards**
  - PRIME ,Project Integrated Mediation
  - Dispute Boards (ad hoc & permanent)
  - Expert board
- Mediation
- Expert

# Definition of Dispute Board

- A dispute board or dispute review board (DRB) or dispute adjudication board (DAB) is a **'job-site' dispute adjudication process**, typically comprising **three independent and impartial persons selected by the contracting parties**. The significant difference between Dispute Review Boards and most other Alternate Dispute Review techniques (and possibly the reason why Dispute Review Boards have had such success in recent years) is that the Dispute Review Board is **appointed at the commencement of a project before any disputes arise** and, by undertaking regular visits to the site, is actively involved throughout the project (and possibly any agreed period thereafter).



# Construction Projects – where DBs are used

Oil & gas: Large offshore constructions  
& onshore processing plants

Pipelines for oil & gas

Hydro power plants

Wind onshore (& offshore)

Infrastructure (Roads, Railroads, E&M,  
Water & Sewage, O&M) PPP

# Contracts in Norway

Construction/designs & build/EPC (C)

NTK/NF 2015

NS 8405/8407

Kolemo 3.1

PPP-contract NPRA

Nye Veier AS

# Dispute Resolution under execution of the works ~ today

## Dispute

- Disputed Variations incl. time extension
- Final settlement

## Different solutions

- Under execution of the contract
  - PRIME
  - Expert/Umpire
  - Expert Panel
  - Mediation
  - Final settlement



# NTK & NF, NS 8407, KOLEMO

## NTK/NF 2015 E

- Art. 37 (PRIME) & Art. 38 (Arbitration)

## NS 8407 E

- Art. 50.1 to 50.3 (PRIME/Umpire) & 50.4 (Court)

## Kolemo E

- Art. 3.3 (DRB), Art. 34.1 to 34.5 (Expert/Mediation) & Art. 34.6 (Court)

## NPRA PPP special conditions

- Art 34

# Dispute resolution in the construction phase (1)

## Composition

- The Dispute Review Board (DRB) may consist of one umpire/arbitrator or more arbitrators, usually three.
  - Umpire decision
  - PRIME/Project integrated mediations
  - Expert panel

## Appointment

- As soon as possible after the Contract is signed



# Dispute resolution in the construction phase (2)

## Mandate

- PRIME: «to provide the parties with a forum for finding amicable solutions».
- DBR/Umpire: Usually only precatory, however, may be binding unless a party challenges the decision
- Expert board: necessary experience and expertise to be able to consider the disputed issue and make a Professional statement



## Process

- PRIME: The panel proposes a «suitable work methodology».
- DBR/Umpire: Formalised process for stating claim and response and the decision.
- Expert board: Formalized process for stating claim and response and the decision

# NS 8407/8405 – Art. 50/Art. 43 Disputes

- PRIME: If the parties agree, a mediation panel may be appointed to assist in solving disputes during the contract period. (Not in NS 8405).
- Umpire: Unless otherwise agreed, either party shall be entitled, until taking over, to demand disputes to be determined by an umpire.
  - Formalized process for stating claims and to respond.
  - Umpire decides the matter giving statement of reasons.
  - A party shall notify the other party within one month of the decision, whether it intends to accept the decision as binding.
  - Certain matters decided by the umpire shall be complied with, until it is varied, either by agreement or a judgement (such decision must be challenged within 6 months, or else it will be binding).



# Expert panel NPRA

- Art 34.1 Ongoing dispute resolution
  - Contract meeting
  - Cooperation meeting (within 2 months)
- Art 34.2 Expert/expert board
  - Expert/expert board (within three months)
  - Appoint a board comprising three experts from the panel of three legal and four technical appointed
  - Within one month each submit a written presentation,
  - eventual meeting/s for clarifications
  - Within seven days after the cooperation meeting where decision is presented notification with ground if not accepted
  - If accepted = payment

# KOLEMO 3.2

- Art. 3.3 Dispute Resolution Board.
  - Prior to effective date, DRB shall be appointed. Two members from each party. Mandate to decide on disputes. (In effect an agreed solution).
- Art. 34 Governing law and disputes.
  - Upon request, a dispute may either be resolved by an **umpire or Mediation**. If an **umpire** is chosen, the parties shall, prior to a decision is made, **agree if the decision shall be binding or only advisory**.
  - Mediation: Mediator to be agreed by the parties. Four agreed ways of solutions: i) The parties agree in advance that the decision shall be binding; ii) agreed settlement based on the mediator's proposal; iii) The mediator informs that it is not appropriate to continue the assignment; iv) a Party wishes to terminate the assignment.



# Nye Veier as

- Est 2016
- The Norwegian state sole shareholder
- 88 km 4-lane highways built since 2016
- EUR 25 Billion to be invested the coming 20 years
- PRIME in all construction contracts basically an EPC-contract format
- PRIME, two engineers and one lawyer
- 0 construction disputes in civil courts so far

# Lessons learned in Norway

- PRIME – used in a majority of railway projects (Banenor) and by Nye Veier AS
  - mediation
  - Few civil court/arbitrations cases
- Expert/expert board major road projects
  - Role as facilitator
  - No mediation
  - Limited experience
- Expert/expert board PPP
  - Decision/statement
  - No mediation
- Umpire
  - Often used
  - Decision



THANK YOU!

