

**American Bar Association
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The University of Washington Experience

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THE UNIVERSITY OF WASHINGTON EXPERIENCE

I. General

The University of Washington began using DRB's in 1993. Prior to that time, the default dispute resolution mechanisms in the Washington State General Conditions for Facility Construction were mediation and arbitration. The Vice President for Capital Projects decided to eliminate the provision for mediation and arbitration and replace it with a DRB provision.

The requirement for mediation/arbitration was originally contained in Article 8.02 of the Washington State General Conditions for Facility Construction. The University's attorneys modified Article 8 by replacing the mediation/arbitration provision with a DRB process. In 1997, the University modified the language again to add a provision for an Informal Guidance Meeting (Advisory Opinion.)

II. DRB Operations

Precise statistics have not been maintained over the years, but I estimate that the University has used DRB's on over sixty contracts totaling \$6 billion since 1993.

The process used by the University is as follows:

- The DRB is established at the beginning of the project.
- The University nominates one member who must be approved by the contractor.
- Contractor nominates one member who must be approved by the University.
- The two nominees select a third member, who generally serves as Chair of the DRB. The contractor and University must approve the third member.
- The DRB meets on site with the parties once a month.

- Most issues that arise out of the conduct of the work are discussed at these monthly meetings.
- Issues are often resolved during the course of these discussions or in discussions between the parties in the days that follow the meeting.
- The contract provides that the DRB recommendations are not admissible in a subsequent court proceeding.
- The University firmly believes that the informal dialogue that occurs during these monthly meetings provides the primary benefit of the DRB process and assists in timely resolution of disputes.

III. Informal Guidance Meeting

The University became concerned that the parties were putting off the use of the formal DRB until the end of the job, and some issues were not being resolved in real time. As a result, in 1997, the University added the Informal Guidance Meetings.

The procedures for the Informal Guidance Meeting are as follows:

- Parties present disputes at a regularly scheduled meeting of the DRB, if possible.
- Submissions are minimal.
- Presentations are abbreviated.
- The DRB caucuses and after meeting provides immediate informal guidance to the parties.

The benefits of the Informal Guidance Meeting are as follows:

- Issues don't accumulate thereby, "poisoning the well."
- Issues are resolved before positions harden.

- Issues don't compound, creating the dreaded "end of job claim."
- Process cost for the resolution of the dispute(s) is reduced significantly.

IV. Formal Hearings

If the informal guidance is not successful in resolving an issue, the contract provides that the parties can resubmit the issue through the formal DRB process. The process used at the University of Washington is described below:

- Position papers and rebuttals are exchanged between the parties and provided to the DRB
- Informal presentations and rebuttals are made to the DRB, normally by persons involved in the construction.
- After the close of the hearing, the DRB issues a formal decision that becomes binding on the parties unless one or the other files a lawsuit in an appropriate court within 120 calendar days of the date of the Formal Opinion.
- The decision is not admissible in a subsequent court proceeding .

V. Program Results

The overwhelming majority of issues on projects with DRBs have been resolved after discussions in the monthly meetings or after an Informal Guidance Meeting. There have only been four of the Formal "End of Job" hearings in eight years. All issues have been resolved without litigation.

The average cost for a DRB on a typical \$50M University of Washington project is approximately \$100K or about 0.2% of the project cost.

VI. Summary

- The University of Washington has been pleased with the DRB Process.

- Using a DRB Process has dramatically reduced the programmatic cost for disputes resolution.
- The University has never gone to court since it began using DRB's on its major contracts.