



# AAA® Dispute Resolution Board Guide Specifications

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## 1.1 General

- A. Definitions
- B. Summary
- C. Scope
- D. Purpose
- E. Three-Party Agreement
- F. Continuance of Work
- G. Tenure of Board

## 1.2 Membership

- A. General
- B. Criteria
- C. Selection of the Board
- D. Alternative Procedure for Selection of Single-Member Board
- E. Post-Appointment Disclosure
- F. Board Member Challenge Procedure
- G. Vacancies

## 1.3 Operation

- A. General
- B. Reports and Information
- C. Periodic Meetings and Visits

## 1.4 Review of Disputes

- A. General
- B. Prerequisites to Review
- C. Requesting Review
- D. Scheduling Review
- E. Hearing Location
- F. Hearing Procedures
- G. Hearing Attendance
- H. Deliberations
- I. Recommendation
- J. Acceptance or Rejection
- K. Clarification and Reconsideration
- L. Admissibility

## 1.5 Alternative Dispute Resolution

## 1.6 Board Member Fees and Expenses

## 1.7 Administrative Assistance of AAA



## 1.1 General

### A. Definitions

1. *American Arbitration Association* – Neutral not-for-profit provider of Dispute Resolution Board (DRB) services, internationally.
2. *Board* – See Dispute Resolution Board (DRB).
3. *Contract* – The construction Contract of which this Specification section is part.
4. *Dispute* – A claim, change order request, or other issue that remains unresolved following negotiation between authorized representatives of the Owner and Contractor.
5. *Dispute Resolution Board (DRB)* – Three neutral individuals mutually selected by the Owner and Contractor to consider and recommend resolution of Disputes referred to it.

### B. Summary

1. A Dispute Resolution Board (DRB) will be established to assist in the resolution of Disputes in connection with, or arising out of, performance of the work of this Contract.
2. Either the Owner or Contractor may refer a Dispute to the Board. Such referral should be initiated prior to the initiation of other dispute resolution procedures or filing of litigation by either party.
3. Promptly thereafter, the Board will impartially consider the Dispute(s) referred to it. The Board will provide a non-binding written recommendation for resolution of the Dispute to the Owner and the Contractor.

### C. Scope

1. This Specification describes the purpose, procedure, function and features of the DRB. A Three-Party Agreement among the Owner, Contractor and the three Board members using the form and content of Attachment A will formalize creation of the Board and establish the scope of its services and the rights and responsibilities of the parties. In the event of a conflict between this Specification and the Three-Party Agreement, the latter governs.

### D. Purpose

1. The Board, as an independent third party, will assist in and facilitate the timely resolution of disputes between the Owner and the Contractor.
2. Creation of the Board is not intended to promote Owner or Contractor default on the responsibility of making a good-faith effort to settle amicably and fairly their differences by indiscriminate referral to the Board.



## E. Three-Party Agreement

1. All three DRB members and the authorized representatives of the Owner and Contractor shall execute the DRB Three-Party Agreement within 14 days after the selection of the third member.

## F. Continuance of Work

1. Both parties shall proceed diligently with the work and comply with all applicable Contract provisions while the DRB considers a Dispute.

## G. Tenure of Board

1. The Board will be deemed established on the date of establishment stated in the Three-Party Agreement.
2. The Board will be dissolved as of the date of final payment to the Contractor or, should any disputes be pending as of that date, the date on which the Board issues its recommendations regarding those disputes, unless earlier terminated or dissolved by mutual agreement of the Owner and Contractor. The Board's jurisdiction will continue for a period of thirty days beyond the date of its recommendations for the limited purpose of responding to a request for clarification or in the event that a party introduces new evidence.

## 1.2 Membership

### A. General

1. The DRB will consist of one member nominated by the Owner and approved by the Contractor, one member nominated by the Contractor and approved by the Owner, and a third member nominated by the first two members and approved by both the Owner and the Contractor. Unless otherwise agreed by the Owner and Contractor, all members shall be selected from a list provided by the American Arbitration Association, compiled from its International Roster of DRB Members. The third member will serve as Chair unless the Owner and Contractor otherwise agree.

### B. Criteria

1. Experience
  - a. It is desirable that all DRB members be experienced with the type of construction involved in the project, interpretation of Contract documents and resolution of construction disputes.
  - b. The goal in selecting the third member is to complement the experience of the first two and to provide leadership of the Board's activities.



## 2. Neutrality

- a. It is imperative that the Board members be neutral, act impartially and be free of any conflict of interest.
- b. For purposes of this subparagraph (1.02.B.2), the term “member” also includes the member’s current primary or full-time employer, and “involved” means having a Contractual relationship with either party to the Contract, such as by being a subcontractor, architect, engineer, construction manager or consultant.
- c. The following are disqualifying relationships for prospective members:
  1. An ownership interest in any entity involved (with) the Contract, or a financial interest in the Contract, except for payment for services as a member of the DRB;
  2. Previous employment by, or financial ties to, any party involved in the Contract, including fee-based consulting services, within a period of 10 years prior to award of the Contract, except with the express written approval of both parties;
  3. A close business or personal relationship with any key members of any entity involved in the Contract which, in the judgment of either party, could suggest partiality; or
  4. Prior involvement in the project of a nature that could compromise that member’s ability to participate impartially in the Board’s activities.

## C. Selection of the Board

### 1. Request for Assistance

- a. Within 14 days of the effective date of the Contract, the Owner and Contractor shall file a Request for Dispute Resolution Board (DRB) Assistance with the American Arbitration Association. The Request for DRB Assistance shall include a description of the construction project including name, location and approximate Contract price and Contract time; guidelines regarding DRB member compensation and expenses, if any, the names, mail and email addresses, telephone and facsimile numbers of the Owner and the Contractor and their representatives, the names and addresses of all design professionals, consultants and first-tier subcontractors then known, together with the AAA filing fee.

### 2. AAA Inquiry

- a. Upon receipt of a properly filed Request for DRB Assistance, the AAA shall promptly schedule a telephone conference call with the Owner and Contractor to discuss desired qualifications of DRB members.

### 3. List of proposed Board members

- a. Within 14 days after the information is provided by the Owner and Contractor, the AAA shall send the Owner and Contractor an identical list of persons selected from its International Roster of DRB members, including detailed biographical information and disclosures regarding each listed person.

### 4. Pre-appointment Disclosure

- a. Prior to their being listed for review by the Owner and the Contractor, proposed Board members shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or



personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants.

**5. Nomination and acceptance of first two members**

- a.** Unless agreed otherwise, the Owner and the Contractor shall each nominate a proposed Board member from the list and convey the nominee's name to the AAA and the other party within 14 days after receipt of the list from the AAA.
- b.** The Owner and the Contractor shall have 14 days within which to accept, in writing to AAA and the other party, the other party's nominee.
- c.** No reasons for non-acceptance need be stated. In the event of non- acceptance, the nominating party shall submit another nomination within 14 days of receipt until two mutually acceptable members are named.

**6. Nomination and acceptance of third member**

- a.** Upon acceptance of both of the first two members, the AAA will notify them of their appointment, request that they begin selection of the third member and furnish them with the list of persons, biographical statements and disclosures originally sent to the parties. The first two members will endeavor to nominate a third member who meets all the criteria listed above. The third member shall be nominated within 14 days after the first two members are notified to proceed with his/her selection. The nominee's name will be conveyed to the AAA, who will notify the Owner and Contractor. The Owner and the Contractor shall have 14 days within which to accept, in writing to AAA and the other party, the third nominee. No reasons for non-acceptance need be stated. In the event of non-acceptance, the first two members will be requested to submit another nomination within 14 days of receipt of notice of non-acceptance from the AAA.
- b.** In the event of an impasse in selection of the third member from nominees of the first two members, the third member shall be selected by mutual agreement of the Owner and the Contractor within 14 days of the last non-acceptance notice. In so doing, they may, but are not required to, consider nominees offered by the first two members.

**D. Alternative Procedure for Selection of Single-Member Board**

**1. General**

- a.** If the Contract specifies, or the Owner and the Contractor agree, a single-member Board will be established as provided in this Section 102.D

**2. Procedure**

- a.** Upon receipt of a properly filed Request for DRB Assistance detailing the agreement of the Owner and the Contractor to a single-member Board, the AAA shall promptly schedule a telephone conference call with the Owner and the Contractor to discuss desired qualifications of the Board member.
- b.** Within 14 days after the information is provided by the Owner and Contractor, the AAA shall send the Owner and Contractor an identical list of persons selected from its International Roster of DRB members, including detailed biographical information and disclosures regarding each listed person.



- c. Proposed Board members shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants.
- d. The Owner and the Contractor shall each have 14 days in which to strike names not preferred, number the remaining names in order of preference, and return the list to the AAA. The Owner and the Contractor may strike up to three (3) names each.
- e. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of the Board member.
- f. If, for any reason, an appointment cannot be made from the original list, the AAA shall have the authority to send an additional list. If no names are available from that list, the AAA shall have the authority to make the appointment from among other members of its International Roster of DRB members, without the submission of additional lists.

#### E. Post-Appointment Disclosure

Board members have a continuing duty to disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the project or any past or present relationship with the parties to the Contract, including subcontractors, design professionals and consultants. Upon receipt of such information, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the Board members and others.

#### F. Board Member Challenge Procedure

Any objection for cause of the Owner or Contractor to the continued service of a Board member shall be made to the AAA. The AAA shall determine whether the Board member should be disqualified and shall inform the Owner and Contractor of its decision, which shall be conclusive.

#### G. Vacancies

If for any reason a Board member is unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. The new Board member(s) shall be selected in the same manner as the original member. In the event of a vacancy after a dispute has been submitted and hearings commenced, the remaining Board members may continue with the hearing and determination of that dispute, unless the parties agree otherwise.

### 1.3 Operation

#### A. General

1. The DRB shall adopt the operating procedures detailed in the attached Schedule A or formulate new or revised operating procedures consistent with this Specification. Notice of adoption of Schedule A or the



Board's proposal for new/revised DRB Operating Procedures shall be provided by the Dispute Resolution Board to the Owner and the Contractor within 28 days after the effective date of the Three-Party Agreement.

2. Any DRB proposal for new/revised procedures shall be discussed and concurred in by all parties at the first Board Meeting.

### B. Reports and Information

The Board will be kept informed of construction activity and other developments by means of timely transmittal of relevant information prepared by the Owner and the Contractor in the normal course of construction, including but not limited to periodic reports and minutes of project progress meetings.

### C. Periodic Meetings and Visits

1. The Board will visit the project site and meet with representatives of the Owner and the Contractor at regular intervals. The frequency and scheduling of these visits will be every three months or as agreed upon among the Owner, the Contractor and the Board, depending on the progress of the work.
2. Each meeting shall consist of an informal roundtable discussion and field observation of the work. The roundtable discussion will be attended by authorized representatives of the Owner and Contractor. During the discussion, the Board may facilitate conversation among and between the parties in order to resolve any pending claims which may become disputes.
3. The field observations shall cover all active segments of the work. The Board shall be accompanied by authorized representatives of both the Owner and Contractor.

## 1.4 Review of Disputes

### A. General

1. The Owner and the Contractor will cooperate to ensure that the Board considers disputes promptly, taking into consideration the particular circumstances and the time required to prepare appropriate documentation.

### B. Prerequisites to Review

A dispute is subject to referral to the Board when:

1. Either party believes that bilateral negotiations are not likely to succeed or have reached an impasse, and,
2. If the Contract provides for a prior decision(s), such a decision(s) has been issued. The parties shall cooperate to timely comply with any pre-review requirements and may waive such requirements by written agreement.



### C. Requesting Review

1. Either party may refer a Dispute to the Board. Requests for Board Review shall be submitted in writing to the Chair of the Dispute Resolution Board within 14 days of the final decision required prior to Board review. The Request for Board Review shall set forth in writing the nature of the dispute, the factual and contractual basis of the dispute and all remedies sought, together with all documents that support each element of the claim.
2. A copy of the Request for Board Review shall be simultaneously provided to the other party by the referring party.
3. Within 28 days after the Request for Board Review has been filed, the opposing party shall submit in writing to the Chair of the DRB a Response to Request for Board review, including the factual and contractual basis of any defense, together with all documents that support each element of the defense. If the responding party wishes to counterclaim, the responding party shall, within 28 days after the Request for Board review has been filed, submit, in writing to the Chair of the DRB, a Counterclaim setting forth in writing the factual and contractual basis of the counterclaim and all remedies sought, together with all documents that support each element of the Counterclaim. A copy of the Response and/or Counterclaim shall be simultaneously provided to the other party by the responding party. Within 28 days after a Counterclaim is filed, the party opposing the Counterclaim shall submit, in writing to the Chair of the Dispute Resolution Board, a Response to the Counterclaim setting forth the factual and contractual basis of any defense, together with all documents which support each element of the Response to the Counterclaim. A copy of the Response to the Counterclaim shall be simultaneously provided by the filing party to the other party.

### D. Scheduling Review

1. Within seven days receipt of the Response to Request for Board Review or Response to Counterclaim, whichever comes later, the Chair will, in consultation with the Owner and the Contractor, establish dates for any additional pre-hearing submissions and schedule a hearing date. The hearing will generally be conducted at the time of the next regularly scheduled Site visit.
2. In addition, the DRB may convene a preliminary hearing by conference call for the purpose of addressing information exchange, the order of proceedings at the hearing, bifurcation of merit and quantum issues and such other matters that the DRB believes will expedite the hearing process.

### E. Hearing Location

1. Normally, the hearing will be held at the job Site. Any location that would be convenient and have the necessary access to facilities and documentation would also be acceptable.

### F. Hearing Procedures

1. The Dispute Resolution Board shall adopt the Hearing Procedures detailed in the attached Schedule B or develop new or revised Hearing Procedures consistent with this Specification. Hearing Procedures shall be





provided by the Dispute Resolution Board to the Owner and the Contractor within 28 days of the effective date of the Three-Party Agreement.

### G. Hearing Attendance

1. The Owner and the Contractor shall have authorized representatives at all hearings. The Dispute Resolution Board may establish rules for the participation of legal counsel and experts at hearings. Unless the DRB permits, counsel may not (a) examine directly or cross-examine any participants; (b) object to questions or factual statements during the hearing or (c) make motions or offer arguments.

### H. Deliberations

1. After the hearing is concluded, the Board will confer to formulate its recommendations. All Board deliberations shall be conducted in private, with all individual views kept strictly confidential from disclosure to others.

### I. Recommendation

1. The Board's recommendation for resolution of the dispute will be provided in writing to both the Owner and the Contractor within 14 days of the completion of the hearings. In difficult or complex cases, and in consideration of the Board's schedule, this time may be extended by mutual agreement of all parties.

### J. Acceptance or Rejection

1. Within 14 days of receiving the Board's recommendation, or such other time specified by the Board, both the Owner and the Contractor shall provide written notice to the other and to the Board of acceptance or rejection of the Board's recommendation. The failure of either party to respond within the specified period shall be deemed an acceptance of the Board's recommendation. If, with the aid of the Board's recommendation, the Owner and the Contractor are able to resolve their dispute, the Owner will promptly process any required Contract modifications.

### K. Clarification and Reconsideration

1. Should the dispute remain unresolved because of a bona fide lack of clear understanding of the Board's recommendation, either party may request that the Board clarify specified portions of its recommendation.
2. If new information has become available, either party may request that the Board reconsider its recommendation in light of the new information.



## L. Admissibility

1. If the Board's recommendation does not resolve the dispute, the written recommendation, including any minority report, will [not] be admissible as evidence [to the extent permitted by law] in any subsequent dispute resolution proceeding or forum [.] [to establish (a) that the Dispute Resolution Board considered the dispute, and (b) the Board's recommendation that resulted from the process.]

## 1.5 Alternative Dispute Resolution

- A. The Owner and Contractor may, by agreement at any time during review of a Dispute by the Board, refer the dispute to the American Arbitration Association for mediation or any other form of alternative dispute resolution. In such an agreement, the Owner and Contractor shall specify the Dispute that is being referred and, in the event of settlement, shall advise the Board regarding such settlement, after which the Board shall have no further authority to proceed with that matter.

## 1.6 Board Member Fees and Expenses

- A. The fees and expenses of the three members of the Board shall be shared equally by the Owner and the Contractor. Unless otherwise agreed by the parties and the Board, the Contractor shall pay the invoices of all Board members after approval by both parties. The Contractor will then bill the Owner for 50 percent of such invoices.
- B. The Owner will, at its expense, prepare and mail progress reports and provide conference facilities and copying services as reasonably required for Board operations.
- C. If the Board desires special services such as legal or other consultation, accounting, data research and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

## 1.7 Administrative Assistance of AAA

### A. AAA Administration

AAA will prepare and provide notices of meetings, transmit meeting minutes and Board recommendations and collect and disburse Board member fees and expenses in accordance with attached Schedule C.