



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش پنجم:

اجرای برنامه و مدیریت ادعاء، دعاوی و اختلافات در فاز ساخت/اجرا (Construction Phase)

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What we will learn?

☐ Claims management

- ❖ Introduction
- ❖ Project and claim documentation
- ❖ Contract and claim administration
- ❖ Types of claim
- ❖ Claim and dispute notification
- ❖ Claim and dispute tracking and processing
- ❖ Notes to consider before writing the claim

☐ Claims and disputes resolution

- ❖ Resolution methods
- ❖ Contract forms

What we will learn?

☐ Parties' considerations

- ❖ Construction manager
- ❖ General contractor and subcontractors
- ❖ Design consultant

☐ Lessons learned from case studies

- ❖ Recommendations
- ❖ Examples

☐ Final recommendations

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Authority to settle

- ✓ Authority to craft **own solution**
- ✓ Decisions must be made **during mediation**
- ✓ Each party must have **someone** present with **authority to settle**
- ✓ For mediation to succeed all parties have **full settlement authority** at the table **during mediation** (not out of the table after mediation)

*But this is problematic when mediating with **public owners** since there is usually not an **authorized person** available during mediation*

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ **Authority to settle**

*But this is problematic when mediating with **public owners** since there is usually not an **authorized person** available during mediation*

- ✓ If you are representing a public owner...
 - Arrange to have decision makers **at mediation**, if possible
 - If cannot do so, obtain authority to settle **within “range”**
 - If cannot settle within “range” have **personal/cellphone numbers** of **decision makers** and ask them during the mediation
 - If cannot, arrange to **present** to decision makers **immediately following mediation**

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Authority to settle

*But this is problematic when mediating with **public owners** since there is usually not an **authorized person** available during mediation*

- ✓ If you are representing a claimant against public owner
 - Check to see if owner representative has “**range authority**”
 - Is settlement subject to **council approval**
 - If reach **settlement**
 - Get agreement that **owner representative** prepared to “sell” settlement to **decision making authority**

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ During mediation

- ✓ Be a participant & a decision maker
- ✓ Remember, it is
 - Your project
 - Your case
 - Your money
 - Your solution!

And you have to live with outcome

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Project staff participate?

- ✓ **Advantages** – more likely to
 - **Present** case **better**
 - **Evaluate** **facts** & arguments **objectively**
 - **View** settlement as fair, **reasonable** if participated in mediation
 - Gain **understanding** of **risk** of “**legal battle**”

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Trust the mediator

- ✓ If mediator carefully selected, has
 - Expertise
 - Analytical skills
 - Straightforward approach
- ✓ For mediation to succeed, **do not**
 - Constantly question approach
 - Assume bias against you
 - Assume you will be “forced” into unfavorable settlement
- ✓ Develop trust with mediator
- ✓ Respond openly to mediator questions

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Team approach

- ✓ Having **one person** make **presentation easier** for mediator
 - But, **team approach** may make presentation better & **improve outcome**
- ✓ With team
 - Different perspectives possible
 - Different personalities in play
 - More balanced issue discussion possible

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Summary presentation

- ✓ Purpose of mediation is **settlement**, not fact finding
- ✓ Not forum for **detailed technical** presentations
- ✓ Presentations should be **brief**
- ✓ Details should be **summarized**
- ✓ Supportive materials ready, if requested
- ✓ Focus on **main points**, not details
- ✓ Follow **KISS rule**
 - Focus on **key issues**

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ No insults

- ✓ **Don't insult** other party, attorney
 - Insults harden positions
 - Not make them more flexible
- ✓ **Impress** other party with **facts**
 - Do **not offend** them with insults
- ✓ **Personal attacks** on other side **not likely to result** in reaching goal of reasonable settlement

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Use documented facts

- ✓ **Facts are facts**, argue them strongly
 - Do so to **influence**, **not inflame** others
- ✓ Do **not digress** to **personality** issues
- ✓ Be **hard** on the **problem**!
- ✓ Be **soft** on the **people**!

Remember, you need their consent to reach settlement!

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Factors in other benefits

- ✓ Settlement typically involved **\$\$ payment**
- ✓ But **other benefits** may also result
 - ✓ Allow project **close out**
 - ✓ Allows **retainage release**
 - ✓ May allow **return of LD's**
 - ✓ **Frees up bond** limits
 - ✓ Avoids **litigation costs**

Find items of high value to other side, low value to you – use them!

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Prepare graphics

- ✓ Summarize case in a few **graphics**
- ✓ **Graphics** should show essence of **issues**
- ✓ Use **graphics** to help **focus case**
 - Aid oral presentation
 - Remind mediator of your story
 - Provide synopsis of merit, damages

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Know “walk away” number

- ✓ Mediation generally focuses on **“how much”**
- ✓ Mediators will **ask, expect response**
- ✓ Must go into mediation knowing your **“bottom/top line”**
- ✓ Once know your case, identify your **“walk away number”**
 - At what point, is deal not worth it? Know that point!

For example, the owner says

I don't have \$6,000,000 because I don't have budget for this

Let's go to the court!

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Know “walk away” number

- ✓ Remember...
 - ✓ “**Bottom line**” may **change** in mediation
 - ✓ Don’t “negotiate against yourself”
 - ✓ Don’t honor “**outrageous demands**”
 - ✓ Don’t be “**too generous**” in revealing “**bottom line**” too early in mediation

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Dealing with numbers

- ✓ If **expecting payment** from other side
 - **“Boost” minimum number** willing to accept
 - It will be negotiated **downward**
- ✓ Remember also that mediators **trained to “push” numbers** offered by both parties

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ **Maintain control**

- ✓ Aggressive, **inflammatory tactics** generally **not work** in mediation
- ✓ Do not become
 - o Angry
 - o Upset
 - o Fixed in concrete
- ✓ Remain in control!
 - o Take breaks, as needed

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Listen, then talk!

- ✓ Repeat what you **heard**, what you **think** other **side said**
- ✓ Ask for confirmation, **clarification**
- ✓ Check, see if getting **entire message**
- ✓ Don't be in such a **rush** to **respond** that thinking of response while other still speaking

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ How to talk?

- ✓ Don't **counterattack**
 - Probe
 - Ask why?
- ✓ Ask other side to **“explain again”**
- ✓ Don't be afraid to **“be slow”**
- ✓ **Don't underestimate** other side's ability to solve own problem with creative alternatives
- ✓ Be prepared to **modify own position** as learn more about other's position

Remember, the goal is settlement!

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ No walk outs

- ✓ One **key to success** in mediation
 - Keep talking!
- ✓ Good mediators **keep both** sides at the **table**
 - Wear down position
- ✓ Walk outs
 - **Stop communication**
 - Leave other **side** in **stronger** position
- ✓ **Not likely** to lead to **resolution**
 - More likely to **lead to litigation!**
- ✓ **Successful** mediation requires **control & patience!**
- ✓ Be prepared to spend a **lot of time in mediation**

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Make settlement easy

- ✓ Identify concerns
- ✓ Emotional issues may be settled without costing money
 - Apology
 - No adverse commentary
 - No bad performance rating
 - Promise of future work
- Try to find concessions (امتیازات) that are
 - Meaningful to other side
 - Little cost to your side

Do not let emotions block settlement

Alternative dispute resolution – Mediation: How to succeed at mediation

3. At mediation

❖ Be prepared to make business decisions

- ✓ Win/win settlement **desirable**
- ✓ Potential settlements **may not** be based on
 - Legal considerations
 - Moral / equity considerations
 - Contractual requirements

But, may make business sense

- ✓ May have to make **painful decisions**
- ✓ May have to
 - Swallow **pride**
 - Admit **wrongdoing**
 - **Compromise** positions

*Do not have to make deal, but
remain open if worth it!*

Alternative dispute resolution – Mediation: How to succeed at mediation

4. After mediation

❖ Sign settlement at mediation

- ✓ Execute settlement while **still at mediation** session
- ✓ Avoid buyer's **regret** the **next morning**
- ✓ Avoid **post**-mediation **problems**

Alternative dispute resolution – Mediation: How to succeed at mediation

CONCLUSION

❑ Mediation is

- ❖ Continuation of negotiation
- ❖ In structured setting
- ❖ With assistance of neutral

❖ Mediation is not easy

❖ Should not be attempted without thorough preparation

Alternative dispute resolution – Mediation: How to succeed at mediation

CONCLUSION

Properly done, mediation is a very effective dispute resolution mechanism

Improperly done, mediation is frustrating, amounts to “free discovery”

Alternative dispute resolution – Mediation: How to succeed at mediation

Remember

It's almost never too late to request mediation!

Alternative dispute resolution – Arbitration: An overview

- ❑ In late 19th century, arbitration came into **construction industry**
 - ❖ In U.S. introduced by **AIA** in **1888 & 1905 contracts**
- ❑ In 1966, a committee of engineers, architects and contractors developed **construction industry arbitration rules** for use specifically within the construction industry to be administered by the American Arbitration Association (AAA).
- ❑ This committee, the National Construction Dispute Resolution Committee (NCDRC), remains in existence and **continuously reviews** and **updates** these rules.
- ❑ The AAA rules and procedures are the **most commonly utilized** within the industry.
 - ❖ They are **incorporated** by reference in the majority of standard construction documents, including those issued by **CMAA** as well as by **AIA** and **AGC**.

*We will see the procedure of Arbitration and Mediation provided by AAA in the **Consulting course***

Alternative dispute resolution – Arbitration: An overview

- اساس داوری مبنی بر **تراضی و توافق** طرفین اختلاف است و صرف **قابل اعتماد و اطمینان** بودن طرفین برای شخص داور کافی است و **تحصیلات حوزوی** یا حقوقی و غیره **شرط نیست**.
- کلاسهای هم در این زمینه برگزار می شود که **مدارک معتبر** می دهند و درجه بندی هم میباشد.
- ❖ **قوه قضاییه** هم بعد گذراندن دوره مدرک داوری اعطاء میکند.
- داوری حکم قاضی خصوصی را دارد و این موضوع و با **ریش سفیدی و میانجیگری** فرق مینماید.
- رای داور هم **عملیاتی** هست و هم **لازم الاجرا**، ولی میانجیگری لازم الاجرا نیست و به مثابه پیشنهاد مطرح میگردد و ممکن است طرفین در میانجیگری به توافق نرسند.
- ❖ در واقع، در میانجیگری به دنبال **توافق** هستیم و **نه صدور رای!**
- شرایطی وجود دارد که رای داوری از طریق **دادگاه رد میگردد**.
- ❖ در شرایطی که **رای مدلل و موجه نبوده** باشد...
- ✓ یک داور بهتر است هم **کارشناس** بوده و هم **اشنا با علم حقوق** باشد چون انشای رای یک **نکته بسیار مهم** هست.

Alternative dispute resolution – Arbitration: An overview

اشخاص زیر نمیتوانند اقدام به داوری نمایند:

- ۱- کسانی که سن آنان کمتر از ۲۵ سال تمام باشند.
- ۲- کسانی که در دعوی یا اختلاف ذی نفع باشند.
- ۳- کسانی که با یکی از اصحاب دعوی قرابت سببی یا نسبی تا درجه دوم از طبقه سوم داشته باشند.
- ۴- کسانی که خود یا همسرانشان وراثت یکی از طرفین باشند.
- ۵- کسانی که قیم یا کفیل یا وکیل یا مباشر امور یکی از اصحاب دعوی هستند یا یکی از اصحاب دعوی مباشر امور آنان باشد.
- ۶- کسانی که با یکی از اصحاب دعوی یا با اشخاصی که قرابت نسبی یا سببی تا درجه دوم از طبقه سوم دارند، در گذشته یا حال دادرسی کیفری داشته باشند.
- ۷- کسانی که خود یا همسرانشان یا یکی از اقربای سببی یا نسبی تا درجه دوم از طبقه سوم او با یکی از اصحاب دعوی (اختلاف) یا زوجه یا یکی از اقربای نسبی یا سببی تا درجه دوم از طبقه سوم او دادرسی مدنی دارند.
- ۸- کارمندان دولت در حوزه ماموریتشان

Alternative dispute resolution – Arbitration: An overview

- ❑ **Private forum** in which a **panel** of **one or three “arbitrators”**
 1. Conducts hearing
 2. Issues a decision
- ❑ **Process** dictated by **contract** or **other formal agreement**
- ❑ **Third party neutral controls** the process
- ❑ **Decisions** are usually **legally binding** and **enforceable** in the court
 - ❖ Often the contract **eliminates right** to appeal to the **court**, but can be conducted in different forms: **domestic, international, non-binding, etc.**
- ❑ May be **dictated** by contract, statute, or other agreement
- ❑ Typically **follows a formal process** controlled by a **third party**
- ❑ Typically **not confidential** and everything will be recorded and will **become public**



How to select the arbitrators?

Alternative dispute resolution – Arbitration: An overview

How to select the arbitrators?

- ❑ American Arbitration Association (AAA) provides **arbitration** services to individuals and organizations who wish to **resolve conflicts out of court** (www.ADR.org)
- ❑ The AAA also administers **mediation** through www.AAAMediation.org
- ❑ AAA was founded in **1926**.
- ❑ The International Centre for Dispute Resolution (ICDR), established in **1996** by the **AAA**, administers **international arbitration proceedings** initiated under the institution's rules.
 - ❖ ICDR has offices in **USA, Mexico, Singapore, and Bahrain**

Each party selects one neutral arbitrator and those arbitrators select the third neutral arbitrator

The third party is the most neutral and will be assigned a chairman of the panel

Alternative dispute resolution – Arbitration: An overview

آشنایی با انجمن داوری آمریکا و مرکز بین‌المللی حل اختلاف



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

Read it from the following link:

<https://dralavipour.com/blog/view/aaa-icdr-intro>

Alternative dispute resolution – Arbitration: An overview

The **CM** will likely be a key percipient witness on behalf of the owner in the **arbitration**

hearing

and

may be responsible for **organizing the document** production **allowed by the arbitration**

panel.

The **CM's** readiness to properly **testify as a witness** as to **all aspects of the claim** is

critical to the successful conduct of the arbitration hearing.

Alternative dispute resolution – Arbitration: Typical procedure

1. Making a written demand to the other side to initiate arbitration

- ❖ Stating the **nature** of the **dispute**
- ❖ Stating the **amount involved**
- ❖ Stating the **remedy sought**

Alternative dispute resolution – Arbitration: Typical procedure

2. Selecting an arbitrator and arbitral panel

- ❖ If the other party agrees to arbitrate, a **board of arbitration**, usually consisting of **one or three persons**, is then selected.
 - ✓ How **many arbitrators** are required?
 - ✓ Not only based on their **impartiality**, but also their **knowledge** and **experience** in the construction field.
 - ✓ No arbitrator should have any **family**, **business**, or **financial relationship**
- ❖ What is the **technical expertise** and **experience** desired?
- ❖ What is the **individual's reputation** for **impartiality**, **fairness** and **soundness** of decisions?
- ❖ What are the **fee structures**?
- ❖ **How** will the arbitrator(s) be **chosen**?
- ❖ What **specific skills** are **required** by the arbitrator?

Alternative dispute resolution – Arbitration: Typical procedure

3. Preparatory (preliminary) conference

❖ Once the arbitrator has been **chosen**,

parties normally agree to **hold a preparatory conference** and
specify **date and place of hearing**.

✓ **Where** will the arbitration be held?

○ The location should be **neutral**, **accessible** and **convenient**.

✓ **What type** of **formality** is required?

✓ What are the **costs** of **facilities**?

✓ Would it be **advisable** to use the **expertise** of established service providers?

Alternative dispute resolution – Arbitration: Typical procedure

4. Exchange of statement of positions

❖ Then, **arbitrator** asks to

submit the issues by asking the **exchange of statements** of position

✓ Are the issues defined in writing and agreed by all parties?

Alternative dispute resolution – Arbitration: Typical procedure

5. Conduct of the arbitration hearing

- ❖ Each party can be **represented** by **counsel** and
- ❖ Each party is **entitled** to **question** the **other party** and **its witnesses** (less formal than litigation).

i. **Pre-hearing Disclosure**

- ✓ What **documents** are to be **exchanged** (financial statements, business records, contracts, reports from experts..)?
- ✓ Set forth in **writing** the **names** and **statements** of **all witnesses**.
- ✓ **Exchange** expert **witness reports**.
- ✓ What are the **time frames** for **disclosure** and **penalties** for **default**
- ✓ What is the **power** of the **arbitrator** to **deal** with any **default**.

Alternative dispute resolution – Arbitration: Typical procedure

5. Conduct of the arbitration hearing

ii. Conduct of Hearing

- ✓ Is the arbitration to be **conducted entirely** on the basis of an **exchange of documents**?
- ✓ Will there be **submissions** only on the **documentary evidence** (written or verbal)?
- ✓ If there will be **oral evidence**, **who** will give it?
- ✓ What is the **sequence** for the **presentation** of **evidence**?
- ✓ Will the **rules of evidence** be formal or relaxed? If the **latter**, under **what circumstances**?
- ✓ Will **copies of documents** be **accepted**?
- ✓ Will the **sessions** be **recorded**; if so how?
- ✓ What will be the **powers of the arbitrator**?
 - Should they be allowed to **order interim measures**
 - Should they be allowed to **appoint an expert**

Alternative dispute resolution – Arbitration: Typical procedure

6. Awards

- ❖ An arbitral **panel** shall be in writing and shall be signed by the **arbitrator or arbitrators**.
- ❖ A **written copy** of the **findings and award** signed by the arbitrators is **sent** to each of the parties.
- ❖ Once the disputants have **submitted** to arbitration and an award is **handed down**, the parties are bound to it.
 - ✓ What is the **time** for **delivery** of the **award**?
 - ✓ Are there **sanctions** for **failure to deliver** the award in a timely fashion?.
 - ✓ Are **written reasons** required?

Alternative dispute resolution – Arbitration: Typical procedure

Do not forget to consider the following points

- ❑ Take an **active role** in **panel selection**
- ❑ Select a **panel chair** that will help **expediting** the hearing process
- ❑ Tailor and minimize **discovery**
- ❑ Simplify the **rules of evidence**
- ❑ Use **experienced counsel** and **independent experts** to prepare a comprehensive case strategy
- ❑ Consider using **independent expert witnesses** to:
 - ❖ Assess the technical issues
 - ❖ Prepare analysis that demonstrates entitlement
 - ❖ Persuasively present analysis and results
 - ❖ Properly calculate damages
 - ❖ Prepare demonstrative exhibits

Alternative dispute resolution – Arbitration: Pros

- ☐ **Arbitrators** can be **selected** on the basis of **experience** relevant to the issues
- ☐ **Follows** a format, defined process
- ☐ **Limited discovery** compared to **litigation**
- ☐ **Lower costs** for pre-trial phase
- ☐ Can be **faster** than litigation
- ☐ Party involvement in **panel selection**

Alternative dispute resolution – Arbitration: Cons

☐ Positions presented are considered **sworn testimony**

❖ **Unlike mediation**, cases can be used **against you**.

☐ **Costs** can **increase**

☐ Can take **longer** than expected

☐ **Limited appeal** options

❖ Usually it is binding

Alternative dispute resolution – Dispute review boards: An Overview

- ❑ The **DRB method** of dispute resolution was developed by the **committee** on contracting practices of the underground technology **research council of ASCE**
- ❑ The **DRB** comprises **three members**: one selected by the **owner**, one by the **contractor**, and a third selected by the **first two**
- ❑ All **DRB members** are **impartial** and **experienced** in construction;
they are **appointed soon** after the **contract is awarded**.
however, it is critical that the individuals are **neutral**.

Alternative dispute resolution – Dispute review boards: An Overview

❑ Normally the contract provides for the **DRB to meet** at the **job site** on a **regular basis**.
typically **quarterly**, or **more frequently**, if needed.

❑ The **board** is to be **kept informed** of

1. Project's progress
2. Issues as they develop

DRB members are sent progress reports and visit the project periodically

Alternative dispute resolution – Dispute review boards: An Overview

- ❑ The **DRB** is **not used** for routing claims,
but for the **resolution** of **major problems**
- ❑ The **board** usually does **not make decisions**,
but gives the parties **its recommendation** in **writing** and the **reasons** for the
conclusions reached.
- ❑ The **recommendations** of the DRB are **not usually legally binding**,
but are **not likely** to be **reversed** in **litigation**

*Although the recommendations of the board are usually **not binding**,
experience has shown that such recommendations are **accepted in nearly
all instances**.*

*The **DRB method** of dispute resolution has been used with **great success** in several
construction projects*

Alternative dispute resolution – Dispute review boards: An Overview

- ❑ DRB hearings are **typically informal**.
- ❑ Once a dispute has been **heard**, the board will caucus to **render a decision**.
 - ❖ The board's findings are presented in **writing**.
 - ❖ Generally, DRB findings are **non-binding**; however, they **usually** are **admissible in court**.
- ❑ The **cost of the DRB** is generally **split 50/50** between the owner and the contractor
- ❑ **Provisions** for a dispute review board (DRB) are made in the **contract** between the parties.
- ❑ The DRB is **growing in popularity** as it has been **successfully** used on **heavy construction projects** such as dams, highways, and transit work.

Alternative dispute resolution – Dispute review boards: An Overview

- ❑ DRBs are **similar to arbitration** in that **each party presents its position** to an **impartial panel** empowered to render a ruling.
 - ❖ The **decisions** may be **admissible** in **later arbitration or litigation**.
 - ❖ Typically a **presentation** by **each party to the DRB** is required.
 - ❖ The **DRB process** is intended to offer a **more efficient** and expedient method to resolve disputed issues **during the project rather than delaying** the resolution until litigation.
 - ❖ The **CM** may present the **owner's position** or at least **contribute materially** to the content of the **presentation**.
 - ✓ Hence, the **CM's** readiness to **claim and present** on **behalf of the owner** is important to the successful conduct of the DRB hearing.

Alternative dispute resolution – Dispute review boards: An Overview

The American Society of Civil Engineers (ASCE) publication *Avoiding and Resolving Disputes During Construction: Successful Practices and Guidelines*, documents projects where DRBs have been utilized. Of significance, in over 100 projects listed, there were only a small number of disputes that were heard by a DRB. Moreover, no disputes resulted in litigation. The reason for the success of the DRB can be summarized as follows:

- Disputes can be resolved on a timely basis.
- The neutral has construction expertise and is selected by the parties before any dispute arises; such pre-selection saves time.
- The timely nature of the hearings and dispute can be addressed while facts are still current.
- Recognition by bidders that an alternative dispute resolution procedure is in place.
- Early identification of issues and problems.
- Encouragement of communication and evaluation of issues.
- Heavy expenses of post-project proceedings are avoided and everybody saves money.

Alternative dispute resolution – Dispute review boards: Pros

- ❑ The **DRB** hears disputes of an **informal basis** and can provide recommendations for their **timely resolution** before parties adopt **hard positions** leading to litigation
- ❑ The parties are **comfortable** with the recommendations of the DRB **since** the selection of the DRB members is **controlled** by the owner and the contractor
- ❑ Because they **meet periodically** and they are sent **progress reports**, the DRB members are **familiar** with the **elements of the project**
- ❑ With an established **DRB to address disputes** as they arise,
*construction will continue with the **contractor's and owner's efforts** focused on the **work** and **not on the claims***

Alternative dispute resolution – Dispute review boards: Pros

- ❑ There are **no expensive** and **time consuming** preparations compared to the case of formal litigation
- ❑ Although the DRB recommendations are **not usually binding** on either party, there is strong incentive to **accept** the findings
- ❑ The existence of the DRB fosters a **more cooperative** relationship between the parties and often provides the **motivation** for **settlement** of disputes **without appeal** to the DRB

Alternative dispute resolution – Dispute review boards: Cons

- ❑ The DRB does **not replace** the **existing dispute settlement** methods; **rather** it is an **intermediate step** directed at **facilitating** dispute resolution
- ❑ There is a **tendency** on the part of the owner and the contractor to use the DRB as a **consulting body** rather than reaching a settlement
- ❑ The DRB method has **not been used** as **extensively** as the other **ADRs**
- ❑ Sometimes there are **not enough qualified people** for the DRB
- ❑ The **project** must be **large enough**, and the **probability** of **occurrence** of disputes throughout the **course of the project** must be **high enough** to
justify the expense of retaining the services of the DRB members for the entirety of the project

Alternative dispute resolution – Litigation: An overview

- ☐ Decision is made by a **judge or jury**
- ☐ Follows a **formal** process
- ☐ Legally **binding**, but **right to appeal** on questions of law
- ☐ The **CM's readiness** to properly **testify as a witness** to **all aspects of the claim** is critical to the **successful conduct** of the litigation.



Alternative dispute resolution – Litigation: Typical procedure

Do not forget to consider the following points

- ❑ Use experienced **construction law counsel**
- ❑ Know and understand all of the **applicable case law**
- ❑ Use **experienced independent experts** to
 - ❖ Prepare a **comprehensive case strategy**
 - ✓ Judges and juries not construction expert, so look for a proven ability to **simplify** and effectively communicate
 - ❖ Assess the **technical** issues
 - ❖ Assist in **discovery** requests
 - ❖ Present analysis to demonstrate **entitlement**
 - ❖ Persuasively present a through analysis of the **facts**
 - ❖ Apply **accepted methods** to determine impacts and calculate damages

Alternative dispute resolution – Litigation: Pros

- ❑ Conducted on **sequential days**, so judge/jury is more likely to **retain information**
- ❑ **Binding decision/judgement**
 - ❖ Subject to appeal for **errors** of law or **abuse** of discretion
- ❑ **Tell your side** of the **story** to a **neutral** decision-maker/fact-finder
- ❑ **Full opportunity** to take **discovery** to **uncover pertinent facts**
- ❑ **More appeal options**
 - ❖ If the **court is incorrect** in its statement or application of legal principles, the litigants have an **avenue of appeal**

Alternative dispute resolution – Litigation: Cons

- ☐ Requires more time
- ☐ **Discovery** results in higher pre-trial costs
 - ❖ Discovery from emails, letters, notices, etc. are **extremely expensive**
- ☐ Higher overall costs due to trial
- ☐ Explaining a construction project to a jury that is not professionally familiar
- ☐ Lack of control over the process
- ☐ Decision is available to the public

Alternative dispute resolution – Conclusion

Table 18.1 Comparative dispute resolution processes

Type	Time	Appeal	Formal	Cost
Mini-trial, Dispute Review Board or other project site resolution	Usually very quick, normally within 30 days.	Almost always appealable, but could be binding by contract or project site agreement.	No.	Fairly inexpensive.
Mediation	Shorter than arbitration, and usually a time limit of a month is set from the time both parties agree to mediation.	Only if the parties do not settle the dispute. Binding on what is agreed to and settled.	Yes, to the extent a process will be followed and the final agreement set forth in writing, signed by both parties.	Modest, but a cost that has not been expected, and the settlement is usually not all that either party would have wanted.
Arbitration	Under \$100,000, usually resolved within 30 to 90 days. Larger cases can take months, even years.	Only under very narrow circumstances, such as impropriety of an arbitrator.	Yes, but actual law and legal proceedings may not be followed as closely as in a court trial.	Moderately expensive in money, expensive in time for preparation and presentation.
Court trial	Usually months before case is called and sometimes years before final resolution.	Yes, from a lower court to a higher court, but good cause must be shown.	Very.	Expensive in both time and money.

Alternative dispute resolution – Conclusion

When to use negotiation?

- ❑ If you are unable to prevent the dispute, do your best to **resolve it** through negotiation
 - ❖ This is your fastest and cheapest option
 - ❖ A negotiated settlement is the **best way to preserve** an **ongoing business** relationship
 - ❖ Be objective in your **analysis**
 - ❖ Your costs to resolve the matter only **go up from here**

Alternative dispute resolution – Conclusion

When to use mediation?

- ❑ If you are **unable to resolve** the matter by **negotiation**, if you believe it is a **“good faith” dispute**, consider giving **mediation** a try
 - ❖ Do it as **early as possible**
 - ❖ All parties must be **willing to compromise**
 - ❖ Be prepared with a **persuasive presentation**
 - ❖ Be mindful of the **cost and risk** of **going forward**

Alternative dispute resolution – Conclusion

When to use arbitration/litigation?

❑ If you are **unable to resolve** the matter by **mediation**, consider other alternatives to **arbitration/litigation**

- ❖ Early neutral evaluation
- ❖ Minim-trials
- ❖ Fast-track arbitration

If you are unable to avoid arbitration or litigation, keep in mind:

- ❖ **It is never too late to settle**
 - ❖ Factor **costs** into your considerations and understand that you have **already lost**
 - ❖ **Keep** the **lines of communication open**
 - ❖ **Settlement** avoids the **expense and stress** of trial
 - ✓ It allows the parties to **get back** to the **business** of their businesses

Alternative dispute resolution – Conclusion

It is never too early to think about next time

Claims and Disputes Resolution

(Contract forms)

What forms of agreement?

- ☐ **AIA Document B101-2017:** Standard form of Agreement between Owner and Architect
- ☐ **AIA Document A201-2017:** General Conditions of the Contract for Construction
- ☐ **AGC Document NO. 655-1998-Revised 2009:** Standard Form of Agreement between Contractor and Subcontractor
- ☐ **ConsensusDocs 750-2011-Revised 2014:** Standard Agreement between Constructor and Subcontractor
- ☐ **AIA A401-2017:** Standard Form of Agreement between Contractor and Subcontractor
- ☐ **FIDIC (Red Book, 2017)**
- ☐ نشریه ۴۳۱۱



AIA document B101-2017: Owner and Architect

❑ General

❖ SCOSE = SOUTH CAROLINA OFFICE OF STATE ENGINEER

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 All disputes, claims, or controversies relating to the Agreement shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Architect agrees that any act by the State regarding the Agreement is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase "the State" includes the Owner, any governmental entity transacting business with the Architect pursuant to the Agreement, and the State Fiscal Accountability Authority. Architect consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Architect by certified mail (return receipt requested) addressed to Architect at the address provided in the AIA B101 2017, SCOSE edition or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.



AIA document B101-2017: Owner and Architect

❑ General

❖ SCOSE = SOUTH CAROLINA OFFICE OF STATE ENGINEER

§ 8.1.2 Waiver of Claims

To the extent damages are covered and paid for by property insurance provided by the Contractor, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction SCOSE edition. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.



AIA document B101-2017: Owner and Architect

☐ General – Waiver of claims

§ 8.1.3 The Architect and Owner waive claims against each other for listed damages arising out of or relating to this Agreement.

§ 8.1.3.1 For the Owner, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section 11.10.2, (viii) lost revenue and profit lost use of the property, (ix) costs resulting from lost productivity or efficiency.

§ 8.1.3.2 For the Architect, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section 11.10.2.1 (Interest), (vii) unamortized equipment costs; and (viii) losses incurred by the Architect's consultants for the types of damages the Architect has waived as against the Owner.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Payments due to the Architect and unpaid under this Agreement shall bear interest only if and to the extent allowed by S.C. Code Ann. §§ 29-6-10 through 29-6-60. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

AIA document B101-2017: Owner and Architect

☐ General – Waiver of claims

§ 8.1.3.3 This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination of this Agreement.

AIA document B101-2017: Owner and Architect

☐ General – Waiver of claims

§ 8.1.4 Waiver of Architect Claims Against the Contractor

The Architect waives all claims against the Contractor and any of the Contractor's subcontractors (at any tier) for listed damages arising out of or relating to this Contract. The listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) interest, (vii) unamortized equipment costs; and (viii) losses incurred by the Architect's consultants for the types of damages the Architect has waived as against the Contractor. This mutual waiver is not applicable to amounts due or obligations under Section 2.5.11 (Third Party Indemnification).



AIA document B101-2017: Owner and Architect

☐ Mediation

§ 8.2 Mediation

§ 8.2.1 Reserved

§ 8.2.2 If either party files a request for resolution of a contract controversy with the Chief Procurement Officer for Construction (CPOC) pursuant to Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, as amended, the Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation using a mediation process and mediator mutually agreeable to both. The Owner and Architect shall act in good faith in selecting and agreeing on mediation procedures and a mediator. If the Owner and Architect cannot in good faith agree on mediation procedures and/or a mediator, they shall use procedures and/or a mediator appointed by the CPOC. Mediation shall proceed in advance of Administrative Review by the CPOC.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be approved by the CPOC.

§ 8.2.4 If the parties cannot resolve a dispute through mediation pursuant to this Section 8.2, the parties shall so notify the CPOC and proceed in accordance with the procedures set forth in Article 17 of the South Carolina Code of Laws, as amended.

AIA document B101-2017: Owner and Architect

☐ Termination and Continuing contract performance

Survival clauses cause certain provisions of a **contract** to remain valid after the expiration or **termination** of a **contract**.

§ 8.3 Reserved

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

§ 8.5 Continuing Contract Performance

Pending resolution of a claim or dispute, including but not limited to, whether any services Owner expects Architect to perform are within the scope of Basic Services or whether Architect is entitled to additional compensation for any services requested, the Architect shall proceed diligently with the performance of its services under this Agreement, and Owner shall continue to make payments in accordance with this Agreement for all services rendered by Architect which are not the subject of the claim or dispute.

AIA document A201-2017: General conditions for construction

☐ Claims

Remember we saw this multiple times?

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

AIA document A201-2017: General conditions for construction

☐ Claims

Remember we saw this multiple times?

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

AIA document A201-2017: General conditions for construction

☐ Claims

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

AIA document A201-2017: General conditions for construction

☐ Claims

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

AIA document A201-2017: General conditions for construction

☐ Claims

This requires the contractor to have contemporaneous analysis

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

AIA document A201-2017: General conditions for construction

☐ Claims

This requires the contractor to have contemporaneous analysis

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

AIA document A201-2017: General conditions for construction

☐ Claims

Remember this?

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.



AIA document A201-2017: General conditions for construction

☐ Initial decision

Initial Decision Maker only decides for owner, unless something else mentioned!

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

Initial Decision Maker has 5 choices after the notice received!

The decision should be made within 10 days!

AIA document A201-2017: General conditions for construction

☐ Initial decision

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

***Party should respond to Initial Decision Maker's request within
10 days in 3 different ways!***

AIA document A201-2017: General conditions for construction

❑ Initial decision

Initial Decision Maker makes initial decision in writing including the statement of reasons for decision!

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

Initial Decision Maker's decision is final and binding unless the parties do not agree...

1. Mediation

2. Binding dispute resolution

AIA document A201-2017: General conditions for construction

❑ Initial decision

***The party that disagrees with the initial decision
Should demand for mediation in writing within 30 days***

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

***If the party fails to file for mediation within 30 days after receipt
of a demand for mediation,
the rights could be waived!***

AIA document A201-2017: General conditions for construction

☐ Initial decision

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

Mechanic's liens are legal documents that essentially **reserve the rights** of the filer to **seek unpaid compensation**. They are **usually filed by** contractors, subcontractors, or suppliers that **never received payment** for work that they performed or materials that they provided on the property.

AIA document A201-2017: General conditions for construction

☐ Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

AIA document A201-2017: General conditions for construction

☐ Mediation

This procedure will be taught in advanced level of this course in “Consulting Level”

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

AIA document A201-2017: General conditions for construction

☐ Mediation

If disputes have **not been resolved**....

1. 30 days from the date that mediation has been concluded, or
2. 60 days after mediation has been demand

Either party can file for binding dispute resolution

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

If demand is made **but** party received the demand has **failed to file** for binding dispute resolution within 60 days after receipt,

Both parties waive their rights for binding dispute resolution



AIA document A201-2017: General conditions for construction

☐ Arbitration

This procedure will be taught in advanced level of this course in “Consulting Level”

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The time that the claim is not valid any more (e.g., 10 years after substantial completion)

AIA document A201-2017: General conditions for construction

☐ Arbitration

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.



AIA document A201-2017: General conditions for construction

☐ **Arbitration** **Consolidation** is the act of **combining multiple lawsuits** into a single suit.
Joinder is the act of **bringing additional parties** into a lawsuit.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

موسسه مهندسی و مدیریت ساخت علوی پور (ACEMI)

دفتر آموزش

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