



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

The 2023 AAA® Construction Conference

Effective dispute avoidance & resolution

throughout the project lifecycle

June 8, 2023

Hilton Santa Monica Hotel & Suites, Santa Monica, CA



The American Arbitration Association (AAA) would like to thank the sponsors of the 2023 AAA Construction Conference: *Effective Dispute Avoidance and Resolution Throughout the Project Lifecycle* for their generous support.

LEADERSHIP AND NETWORKING RECEPTION SPONSOR



LEADERSHIP AND LUNCH SPONSOR



LEADERSHIP



FRIENDS



Cooperating Organizations

AIA Contract Documents

American Bar Association Forum on Construction Law

American College of Construction Lawyers

American Society of Civil Engineers

ConsensusDocs

Construction Financial Management Association

Construction Management Association of America

Engineers Joint Contract Documents Committee

National Association of Surety Bond Producers

National Society of Professional Engineers





AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

June 8, 2023
11:15-12:15 pm

The New AAA DARB Rules – Changes and New Opportunities

Faculty:

Adrian L. Bastianelli, III, Peckar & Abramson, P.C.; Washington, DC

Ernest C. Brown, Ernest Brown and Company; San Francisco, CA

Cherrie K. Fisher, PMP, Supply Chain Manager, NTT Global Data Centers Americas, Inc.; Irving, TX

Roberto Hernandez-Garcia, COMAD, SC; Mexico City, Mexico

Session Moderator:

Michael R. Powell, Vice President, Construction Division, American Arbitration Association

INTRODUCTION

- DRB process for the uninitiated
- Benefits of DRB
- Why does DRB process work and when does it not work?
- New AAA DARB rules
- Fees for process
- Benefits of AAA DARB process



PROACTIVE BOARD VS. REACTIVE BOARD



SELECTION OF THE DRB MEMBERS

- Establish at start of project
- Neutral
- Expertise
- Attorneys vs. technical professionals
- Other important attributes of DARB members
- How do you find DARB candidates?
- Training
- How do I break into the field?



SELECTION OF THE DRB MEMBERS

AAA DARB Rule 1.3

- Select from list furnished by AAA
- Parties consult in good faith to agree
- If no agreement, then party appointed and two select third
- All must be approved by both parties – Key
- Challenges to board members decided by AAA
- Impasse – AAA appoints
- Selection of replacement member if vacancy occurs



DARB Rule 1.4

- Cornerstone of DARB process that differentiates it from all other ADR processes
- What is done at meetings?
- Why are the meetings so important?



DARB Rule 1.5B

- Benefits
- Can DARB really give different recommendation if you go to formal process?

DARB Rule 1.5C and AAA Hearing Procedures

- Request for hearing
- When and where
- Pre-hearing submission
- Presentation
- Attorneys
- Recommendations



DARB Rule 1.5(C)

- 14 days to accept or reject or become binding
- 7 days to seek clarification or reconsideration
- Contract determines whether recommendations are non-binding or binding
- If non-binding, contract will determine admissible or non-admissible
- Is one approach better?

INTERNATIONAL VS. DOMESTIC

- Why different
- More often binding
- FIDIC rules
- DARB members
- Other differences



Questions?





AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®