

The Changing Face of Dispute Resolution

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Key words: mediation, adjudication, arbitration, litigation, dispute resolution

SUMMARY

This paper looks at some of the issues in dispute resolution whether in mediation, adjudication, arbitration or litigation.

Mission Statement

- To understand how Dispute Resolution is changing in the global market place
- Correctly establish risk management procedures to avoid disputes
- Manage the successful resolution of those disputes

Summary of the Paper

- Alternative Procurement Strategies
- Legal Framework
- Main types of Contract
- Traditional Types of Dispute Resolution
- Alternative Dispute Resolution

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1. THE CHANGING FACE OF DISPUTE RESOLUTION

1.1. Alternative Procurement Strategies

1.1.1. Traditional

1.1.2. Design and Build

1.1.3. Turn Key EPC

1.1.4. Financed

1.1.5. Cost Plus (Management/CM/Target Cost)

1.2. Legal Framework

- 1.2.1. Form of Contract
- 1.2.2. Law of the Contract
- 1.2.3. Contract Language
- 1.2.4. Location for Dispute Resolution

1.3. Main Types of Contract

- 1.3.1. FIDIC - Federation Internationale des Ingenieurs Conseils
- 1.3.2. EPC – Engineering Procurement Construction
- 1.3.3. ICE – Institution of Civil Engineers
- 1.3.4. JCT – Joint Contracts Tribunal
- 1.3.5. PFI – Private Finance Initiative
- 1.3.6. PPP – Public Private Partnership
- 1.3.7. ECC – Engineering and Construction Contract
- 1.3.8. BOT – Build Operate Transfer
- 1.3.9. DBFO – Design Build Finance Operate

2. TYPES OF DISPUTE RESOLUTION

2.1. Traditional Types of Dispute Resolution

2.1.1. Court of Law

2.1.2. Arbitration

2.2. Alternative Types of Dispute Resolution

2.2.1. Mediation

2.2.2. Adjudication

2.2.3. Expert Determination

2.2.4. Dispute Review Boards – DRB

2.2.5. Independent Dispute Avoidance Panel

2.3. Mediation

2.3.1. Parties meet with Mediator – 1 or 2 days

2.3.2. Both Parties put case

2.3.3. Mediator meets with Parties separately

2.3.4. Persuades Parties to settlement

2.4. Adjudication

2.4.1. Housing Grants, Construction and Regeneration Act 1996

2.4.2. Parties can request appointment of Adjudicator

2.4.3. Appointment and Referral within 7 days

2.4.4. Decision within 28 days of ReferralAny amendments to his or her Report

2.5. Dispute Review Boards

- 2.5.1. Form part of FIDIC conditions
- 2.5.2. On China Project Panel of 3 persons
- 2.5.3. Met bi-monthly over 2 years
- 2.5.4. Total claims US\$400 million claim

2.6. Court Procedures in the UK

- 2.6.1. Civil Procedure Rules
- 2.6.2. Pre-Action Protocol
 - 2.6.2.1. Exchange of Information
 - 2.6.2.2. Attempt to Reach Settlement
 - 2.6.2.3. Efficient Management of Proceedings
- 2.6.3. Expert Determination Professional Institutions

2.7. London Olympics 2012

- 2.7.1. Independent Dispute Avoidance Panel
- 2.7.2. 10 Leading Industry Figures
- 2.7.3. Contract is NEC

2.8. Dubai Middle East

- 2.8.1. Dubai – Sharia Law
- 2.8.2. New Free Zone
- 2.8.3. Dubai International Financial Centre DIFC
- 2.8.4. Own Civil and Commercial Laws
- 2.8.5. Based on UNCITRAL Model Arbitration Law

3. THE FULL CIRCLE

3.1. How Dispute Resolution has come Full Circle

3.1.1. Court of Law

3.1.2. Arbitration

3.1.3. Adjudication

3.1.4. Dispute Review Boards

3.1.5. Court of Law

BIOGRAPHICAL NOTES

Professional Registrations: Fellow of the Institution of Civil Engineering Surveyors; Fellow of the Royal Institution of Chartered Surveyors; Fellow of the Chartered Institute of Arbitrators.

Current Position: Independent chartered quantity surveyor, claims and dispute resolution consultant and expert witness.

International experience: Lived and worked in the USA, Hong Kong, Somalia, Kenya and Trinidad and Tobago over a period of 15 years. Additional working experience in China, the Philippines, Thailand, Taiwan, Sudan, Tanzania, Egypt and the UAE.

Practical experience: Geoffrey Schmitt has dealt with all aspects of claim submissions, claim defence and dispute resolution on a range of civil engineering and building projects including hydro-electric dam storage projects, process facilities, pipelines, marine works, expressways, reclamations, water supply, submarine pipelines and a wide range of building projects presenting and defending cases in dispute resolution including arbitration support, preparation of expert witness reports and appearance as an expert witness in both arbitration and litigation.

Examples of major assignments include acting as commercial and contractual adviser to the World Bank presenting their case to a Dispute Resolution Board in respect of a major project in China; appearing as a quantum expert witness in a case in the High Court in London; providing contractual support to a contractor in arbitration in Taiwan and preparing a quantum expert report in respect of an oil pipeline/marine terminal project in East Africa.

Additional information: Furthering his interest in the global market, Geoffrey is the developer of four multi-lingual websites serving the construction industry, go4construction.com, a global supply chain directory, go4constructionjobs.com, go4engineeringjobs.com and go4oilgasandenergyjobs.com.

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