



DISPUTE BOARDS IN THE GULF

Dispute adjudication boards (DABs) were introduced into the FIDIC forms of contract in 1999 and yet, some twelve years later, there is little evidence of such boards being used in the Gulf States; in fact, some Employers actually delete the DAB provisions or reduce them to an ad-hoc appointment of the DAB. When institutions such as the World Bank and many other banks now insist on the inclusion of dispute boards in contracts for any project funded by them and the International Chamber of Commerce recommends their use, it is difficult to see why there is such apparent resistance in this region.

A dispute board consists of either one or three members who are jointly agreed upon by the parties and the board is appointed at the onset of the project. The board members, who must be suitably experienced, individually enter into a tripartite agreement with the Employer and the Contractor and their fees are paid equally by both parties. The board is required to be impartial, become familiar with the contract and to become conversant with events by way of regular site visits and by reading progress reports and the like.

The board is obliged to provide a reasoned decision within 84 days on any matter that is referred to it. The fact that the board has already been appointed and is acquainted with the project and any areas of potential dispute, ensures that it may



provide adjudication in a considerably reduced period than if the matter were referred to arbitration i.e. days or weeks rather than months or years.

As well as providing adjudications on disputes, the DAB is also required to provide an opinion on any matter at the request of the parties. If one considers that contention often arises due to differences in the interpretation of the contract, an opinion on the correct interpretation by the DAB will probably head off a potential claim or alternatively, provide enough confidence in the potential merits of a claim situation to deal with it amicably.

The Dispute Resolution Board Foundation has gathered impressive statistics over many years. On construction projects having dispute boards, the average number of disputes referred to the boards is 1.2 per project. This is less than the average number of disputes taken to arbitration, or to court on projects without dispute boards and supports the fact that a board that is able to provide quick decisions, prevents the submission of spurious claims and unreasonable determinations and reduces posturing by both parties. On projects having dispute boards, an impressive 98% of disputes are resolved at dispute board level. Additionally, of the 2% of disputes which were referred to arbitration, in almost every case, the arbitration supported the dispute board's decisions. FIDIC allows a party to proceed to arbitration if it does not agree with the board's decision but, given these statistics, such a party would have to give very serious consideration as to whether to accept the board's decision on the



matter or to proceed to arbitration in the hope that a new panel of experts would arrive at a different decision.

According to the Dispute Resolution Board Foundation, the cost of employing dispute boards is between 0.05% of the construction cost on dispute free projects and 0.25% for more difficult projects and it must be remembered that these costs are shared equally between the parties. I would suggest that if it were possible to insure against disputes at such costs, the parties would be rushing to their insurance brokers, especially if these costs are compared to typical costs of arbitration or court proceedings. Additionally, if the Contractor has the comfort that his claims will be dealt fairly, reasonably and in a timely manner, it would be reasonable to assume that he would consider such a situation would remove a certain amount of risk which he would otherwise include for within his price.

In summary therefore, DABs consist of impartial experts who are skilled in adjudication and are also available to advise and provide opinions to the parties; matters referred to the DAB are resolved within a three month period; DABs reduce contention, spurious claims, unreasonable determinations and posturing which allows the parties to concentrate on the project rather than disputes; the cost of using DABs is a negligible part of the project cost, is vastly less than arbitration or litigation and is likely to produce lower bids from tenderers. These are significant advantages to all parties on a construction project, with the possible exception of claims consultants and lawyers.



So what are the disadvantages? Personally, I cannot think of any, but I do suspect that employers may see DABs as an erosion of their ability to act in a high-handed manner toward contractors and supervising consultants fear that DABs may expose poor contract administration.

Andy Hewitt is Principal at Hewitt Construction Consultancy and the creator of Claims Class, training and education providers offering a 2-Day Intensive Training Course and a Distance Learning Course in the field of construction claims. Andy is also author of the book Construction Claims & Responses; effective writing & presentation.

Email: andy.hewitt@hewittconsultancy.com