



# **DISPUTE PREVENTION AND RESOLUTION TECHNIQUES IN THE CONSTRUCTION INDUSTRY**

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# **Dispute Prevention and Resolution Techniques in the Construction Industry**

**Prepared by  
The Construction Industry Institute  
Dispute Prevention and Resolution Research Team**

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## Executive Summary

Three main, underlying causes of construction disputes are: project uncertainty, process problems, and people issues. If these causes are not addressed, they result in disagreements that may escalate into litigation. This escalating process will involve more people, additional time, and higher costs.

The industry has developed various methods to prevent and resolve disputes: preconstruction techniques; dispute prevention techniques; dispute resolution techniques; and conflict resolution techniques. The most valuable methods are those that prevent or resolve disputes as early as possible at the project level under the control of those directly involved.

Most CII member companies agree that alternate dispute resolution (ADR) techniques are a valuable way to reduce the cost of construction, but the industry is only beginning to utilize the techniques available.

CII established the Dispute Prevention and Resolution Research Team to investigate and identify best practices for the industry. The team focused on how disputes either could be prevented or resolved in the most timely, cost-effective manner. The results are described in this summary report.

For additional information, the reader is referred to the team's other works. CII Implementation Resource 23-2, *Prevention and Resolution of Disputes Using Disputes Review Boards*, provides convincing evidence that DRBs are fail-safe mechanisms to facilitate equitable and timely resolutions to disputes. CII Special Publication 23-3, *Disputes Potential Index*, is a software program that can be used to predict the likelihood of disputes on an individual project. Appendix B of this research summary lists other relevant CII publications.



## Introduction

### **The CII Dispute Prevention and Resolution Research Team**

The research team was formed to:

- Review the causes and consider the administrative cost of claims in the construction industry.
- Recommend procedures for claims avoidance.
- Investigate alternatives for early, equitable settlement of claims.

### **Objectives of the Research**

The research was performed under the guidance of the team, which set out to achieve the following specific objectives:

- To gain an understanding of the nature of disputes in construction and of the steps needed to prevent and resolve disputes as part of the construction contract administration process.
- To study the growing field of alternative dispute resolution (ADR) in construction with particular emphasis on techniques that either prevent disputes from occurring or assist in the timely on-site resolution of those that do occur.

### **Research Methodology**

The methodology adopted to achieve the objectives included the following activities:

- A period of literature research and broad-based field interviews to develop a thorough knowledge of the subject.
- A questionnaire-based survey of CII member companies to gather information on the need for and perceptions regarding alternative dispute resolution procedures.

The knowledge gained throughout the research was discussed in depth at team meetings. This made it possible for team members to review the work in progress and use their observations, knowledge, and experience to provide input. Therefore, the final conclusions and guidelines are products of both the research and the knowledge, experience, and unique perspectives of the research team members.

## Findings

### The Construction Claims Process

The research team identified three groupings for the underlying causes of disputes:

- *Project Uncertainty* from pre-existing conditions, outside forces, and complexity that may result in changes beyond the parties' expectations.
- *Process Problems* in the contracting process such as imperfect contracts, incomplete scope definition, unrealistic expectations with regard to cost, or completion dates and poor performance in executing the work.
- *People Issues* that result from poor interpersonal skills, poor communication, lack of responsiveness, and unethical or opportunistic behavior.

These problems often cause disagreements that may escalate into more serious disputes and litigation. This is especially true when project participants are unable to agree on both the entitlement to contract adjustments and on the quantification of the adjustments. In such situations, if the problem is not resolved by personnel directly involved with the project, then others become involved beyond the project level, which may complicate resolution by negotiation.

Many different individuals may get involved in attempts to resolve the problems on a project: project managers, project sponsors, standing advisors, standing neutrals, consultants, neutrals, and litigators. Figure 1 describes these individuals, their responsibilities in the project, and the resolution of issues on the project. As more individuals become involved, resolution may become a more complex and difficult problem.

One of the key findings of the research is that claims develop as a process. Problems not resolved at the project level in a timely manner, using established procedures, may ultimately escalate into matters that are litigated between the parties. In order to prevent and resolve problems, it is essential to understand that