NO KICKING, BITING, OR GOUGING

HOW WE RESOLVE DISPUTES AND CLAIMS
WHEN THE CHANGE-ORDER PROCESS FAILS ---

HOW ARE DISPUTES RESOLVED QUICKLY, FAIRLY, AND IN A COST-EFFECTIVE MANNER?
RESOLUTION

SHOULD THE DISPUTE BE SETTLED DURING THE PROJECT OR AFTER THE PROJECT IS COMPLETED?
RESOLUTION

SHOULD WE WAIT UNTIL THE PROJECT IS FINISHED?
RESOLUTION

IT TAKES TIME AND EFFORT

→ TO DOCUMENT COSTS

→ TO HAVE MEETINGS

→ TO FOCUS EFFORTS ON NEGOTIATIONS INSTEAD OF PROJECT
RESOLUTION

DON’T WAIT?
THE LONGER THE DISPUTE LASTS, THE BIGGER IT GETS

- INCREASED PROCESS COSTS
- UNDERMINED JOB RELATIONSHIPS
- NEGATIVE CASH FLOW IMPACTS
- EXPENSIVE AND TIME CONSUMING POST-COMPLETION ADR
RULES OF ENGAGEMENT

- Establish them when the project begins

Or

- Agree upon what will be done if things get tough
SOME CHOICES

1. ELEVATION/ESCALATION PROCESS
2. INDEPENDENT PROJECT NEUTRAL
3. DISPUTE REVIEW BOARD
4. INTERVENTION PARTNERING
ELEVATION/ESCALATION

PROCESS
ELEVATION/ESCALATION PROCESS

WHAT IS IT?

- STRUCTURED NEGOTIATION PROCESS
- MAY OR MAY NOT BE IN CONTRACT
WHAT IS IT?

- BASED UPON AN ELEVATION MATRIX
- DISPUTES ARE PRESENTED THROUGH A SUCCESSION OF DECISION-MAKING LEVELS
WHAT ARE ITS PURPOSES?

- PROMOTE DECISION MAKING AT THE LOWEST RESPONSIBLE LEVEL OF AUTHORITY
- PROMPTLY RESOLVE DISPUTES
## ELEVATION/ESCALATION PROCESS

### HOW DOES IT WORK?

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ELEVATION/ESCALATION PROCESS

HOW DOES IT WORK?

FIRST ELEVATION TEAM ---

WE'RE NUMBER 1
ELEVATION/ESCALATION PROCESS

- Sets resolution time for dispute
- Notifies next elevation team of dispute and resolution time
- Meets and acts as a team
- Either partially or fully resolves dispute within time frame or it elevates to the next team
ELEVATION/ESCALATION PROCESS

RULES FOR EXECUTIVES

- MAKE A COMMITMENT TO PARTICIPATE
- MAKE SURE UNRESOLVED ISSUES ARE GOING INTO THE ELEVATION MATRIX
ELEVATION/ESCALATION PROCESS

RULES FOR EXECUTIVES

- Ensure clear authority for each team member at each level
- Don’t interfere unless dispute resolution violates law or contract -- no countermands
INDEPENDENT PROJECT NEUTRAL
INDEPENDENT PROJECT NEUTRAL

WHAT IS IT?

- USE OF CONSTRUCTION EXPERT TO PROVIDE INFORMED, INDEPENDENT OPINION FOR A DISPUTE

- NOT TYPICALLY IN CONTRACT -- IMPLEMENTED BY AGREEMENT OF PARTIES
WHAT ARE ITS PURPOSES?

- TO PROVIDE AN INDEPENDENT OPINION
- TO PROVIDE SPECIAL EXPERTISE
- TO PROVIDE A SUPPORTING RECORD
INDEPENDENT PROJECT NEUTRAL

HOW DOES IT WORK?

- ALL AFFECTED PARTIES PICK THE NEUTRAL
- PARTIES AND NEUTRAL SIGN A CONFIDENTIALITY AGREEMENT
- PARTIES SHARE PROPORTIONALLY IN NEUTRAL’S FEES
INDEPENDENT PROJECT NEUTRAL

HOW DOES IT WORK?

- PARTIES DEFINE ISSUES FOR NEUTRAL TO ADDRESS
- PARTIES TELL NEUTRAL WHEN THEY WANT FINDINGS/REPORT
DISPUTE REVIEW BOARD

WHAT IS IT?

🔹 A THREE-MEMBER PANEL OF CONSTRUCTION EXPERTS SELECTED BY THE OWNER AND THE GENERAL CONTRACTOR

🔹 IN BOTH CONTRACT AND PROJECT SPECIFICATIONS
DISPUTE REVIEW BOARD

WHAT ARE ITS PURPOSES?

- TO PROVIDE INFORMED, OBJECTIVE OPINION OF STRENGTHS AND WEAKNESSES OF THE PARTIES

- TO PROVIDE NON-BINDING DECISIONS ON UNRESOLVED DISPUTES

- TO PREVENT LITIGATION
DISPUTE REVIEW BOARD

HOW DOES IT WORK?

FORMAL - WHEN PANEL MEETS TO HEAR DISPUTE AND RENDER ITS NON-BINDING WRITTEN OPINION
DISPUTE REVIEW BOARD

HOW DOES IT WORK?

“WALKING” - WHEN PANEL MEMBERS WALK THE PROJECT AND CAN PROVIDE INFORMED, MORE INFORMAL ADVICE ON THE ISSUES.
DISPUTE REVIEW BOARD

HOW DOES IT WORK?

WHEN ACTING INFORMALLY, MEMBERS ARE AN INVALUABLE SOURCE OF KNOWLEDGE AND EXPERIENCE FOR PROJECT MANAGERS.
Dispute Review Board

How Does It Work?

- Set up at beginning of project
- Members familiarize themselves with project documents and walk the project
- Members meet on a regular basis to maintain contact with the project
HOW DOES IT WORK?

- WHEN REQUESTED, BOARD SETS A HEARING AT OR NEAR THE PROJECT SITE TO HEAR BOTH SIDES OF A DISPUTE
- PARTIES MAY AGREE THAT LAWYERS WILL NOT PARTICIPATE IN HEARING
HOW DOES IT WORK?

- AFTER HEARING THE EVIDENCE, BOARD ISSUES A WRITTEN, NON-BINDING OPINION

- IF DISPUTE IS NOT RESOLVED, BOARD’S OPINION IS ADMISSIBLE EVIDENCE IN ANY SUBSEQUENT ARBITRATION OR LITIGATION
INTERVENTION PARTNERING

WHAT IS IT?

A MULTI-FACETED PROCESS DESIGNED TO RE-DIRECT A TROUBLED PROJECT TO A SUCCESSFUL CONCLUSION
INTERVENTION
PARTNERING

WHAT IS IT?

A “TURN-AROUND” PROCESS THAT COMBINES AN INTENSIVE VERSION OF PARTNERING WITH DISPUTE AVOIDANCE AND DISPUTE RESOLUTION SYSTEMS
INTERVENTION
PARTNERING

WHEN SHOULD IT BE USED?

WHEN DISPUTES ARE SYMPTOMATIC OF MORE FUNDAMENTAL PROBLEMS
INTERVENTION
PARTNERING

ASK:

» ARE THERE MULTIPLE PROBLEMS ON THE PROJECT?

» ARE THE PROBLEMS BEING PROMPTLY RESOLVED?

» ARE THE RELATIONSHIPS ON THE JOBSITE BECOMING ADVERSARIAL?
ASK:

- ARE CLAIMS NOTICES APPEARING?
- ARE ORGANIZATIONS BEING IMPACTED BY TIME AND MONEY?
- IS LITIGATION OR ARBITRATION LOOMING ON THE HORIZON?
INTERVENTION
PARTNERING

WHEN SHOULD IT BE INTRODUCED?

THE EARLIER, THE BETTER,
BUT BETTER LATE THAN NEVER
INTERVENTION
PARTNERING

HOW DOES IT WORK?

PROCEEDS ON TWIN TRACKS
INTERVENTION
PARTNERING

TRACK 1

- ON-SITE TEAM BUILDING AT THE FIELD, PROJECT MANAGER, AND EXECUTIVE LEVELS OF ALL PARTICIPATING ORGANIZATIONS

- REDIRECTION OF EVERYONE’S EFFORTS TO PROBLEM SOLVING AND PROJECT COMPLETION
INSTITUTE DISPUTE AVOIDANCE AND DISPUTE RESOLUTION SYSTEMS TO QUICKLY RESOLVE NEW DISPUTES AS THEY ARISE AND TO QUICKLY, FAIRLY, AND COST-EFFECTIVELY RESOLVE ALL OUTSTANDING CLAIMS
WHAT SHOULD BE REMEMBERED

- MAINTAIN AN ON-GOING DIALOGUE ABOUT CONDITIONS ON A PROJECT
- CONSIDER WHETHER AND WHEN TO USE DISPUTE RESOLUTION PROCESSES
THANK YOU