

# *FDOT 2022 Construction Academy*

## Dispute Review Boards

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# DRB Learning Objectives

- History & Core Principles of DRBs in the USA
- Differences from Traditional Disputes Resolution
- History of DRBs at FDOT
- How FDOT DRBs are Formed
- How DRBs Operate on FDOT Projects
- Regional and Statewide DRBs
- Advisory Opinions
- DRB Effectiveness

# History of DRBs in the USA

- Flashback to the Construction industry in the 1950s
- Intense competition for public construction contracts
- Lower profit margins
- Larger and more complex projects, with many specialities
- Nontechnical pressures, such as environmental regulations, government & socio-economic requirements, public interest groups
- Internal procedures, statutory or regulatory impediments limited the ways for public owners and employers to settle disputes

# History of DRBs in the USA

- Bidding margins became extremely tight
- Many contractors suffered financial instability
- Relationships among contracting parties became very adversarial
- Parties resorted to pursuing all available means to protect their commercial position
- A growing body of lawyers and consultants stood ready to assist the contracting parties
- “Bid low and make it up on claims, if necessary”

# History of DRBs in the USA

- Resulting trend was an increase in disputes resolution by formal litigation
- Relationships became even more adversarial
- The construction industry sought more cost-effective and practical alternative solutions to litigation
- Arbitration became popular because it was less expensive and faster than litigation
- However, it too became costly, time consuming and adversarial
- Cost and time demands could be more than litigation

# History of DRBs in the USA

- 1972 Study by the U.S. National Committee on Tunneling Technology
- Develop recommendations for improved contracting methods
- Conclusions:
  - Disputes and litigation had a deleterious effect upon the efficiency of the construction process
  - Major cause of rapidly escalating construction costs
- Presentation of the study results in 1974 gave birth to DRBs
- Necessity was the mother of invention

# History of DRBs in the USA

- Case in point was the Eisenhower Tunnel in Colorado, constructed to carry I-70 under the Continental Divide at Loveland Pass



# History of DRBs in the USA

- Construction of the first tunnel shaft began in March 1968
- Engineer's Estimate was \$42.5 million; Low Bid was \$54.1 million
- Contract time 3 years; Construction time 5 years (March 1973)



# History of DRBs in the USA

- Construction issues encountered:
  - Fault lines not identified in the test bores; slipped during construction
  - Men & boring machines could not work as fast as expected at high elevation
  - *"We were going by the book, but the damned mountain couldn't read."*
  - Embroiled in feminist movement; *"She is Janet, not James"*
- Final Cost was \$108 million

# History of DRBs in the USA

- Second shaft contract documents included design details on construction methods and sequencing, from lessons learned
- As a first, a formal DRB was included as part of the original contract documents
- Low Bid was \$102.8 million with the second bid only \$189,000 higher
- Construction began in August 1975 and completed in December 1979
- Project was a success in every sense of the word; Owner and Contractor practiced partnering before it became fashionable

# History of DRBs in the USA



- The DRB heard three disputes
- Owner-Contractor relations cordial; all parties pleased at the end of the project
- Final cost of the project, including many owner requested change orders, was approximately \$108 million
- Over 1.7 mi. long; Over 11,000 feet in elevation; highest vehicular tunnel in the world; highest point on the entire US Interstate system

# History – The Growth of DRB Use

- In 1989, the American Society of Civil Engineers (ASCE) promoted the DRB concept in the first edition of its manual, “Avoiding and Resolving Disputes During Construction”
- Updated in 1991 by the Technical Committee on Contracting Practices of the Underground Technology Research Council. Three of the twelve committee members were the eventual founders of the Dispute Resolution Board Foundation (DRBF), discussed later



- In 1995, the World Bank's standard bidding document, "Procurement of Works," provided three options for the settlement of disputes, including the use of a three-person DRB, mandatory for contracts in excess of \$50 million
- In 1996, the Dispute Resolution Board Foundation (DRBF) was established as a non-profit organization to promote the use of the DRB process and serve as an educational resource and information exchange for owners, contractors and DB members
- Also in 1996, McGraw Hill also published "The Construction Dispute Review Board Manual"

## History – The Growth of DRB Use

Traditional  
Alternative  
Dispute  
Resolution  
(ADR)

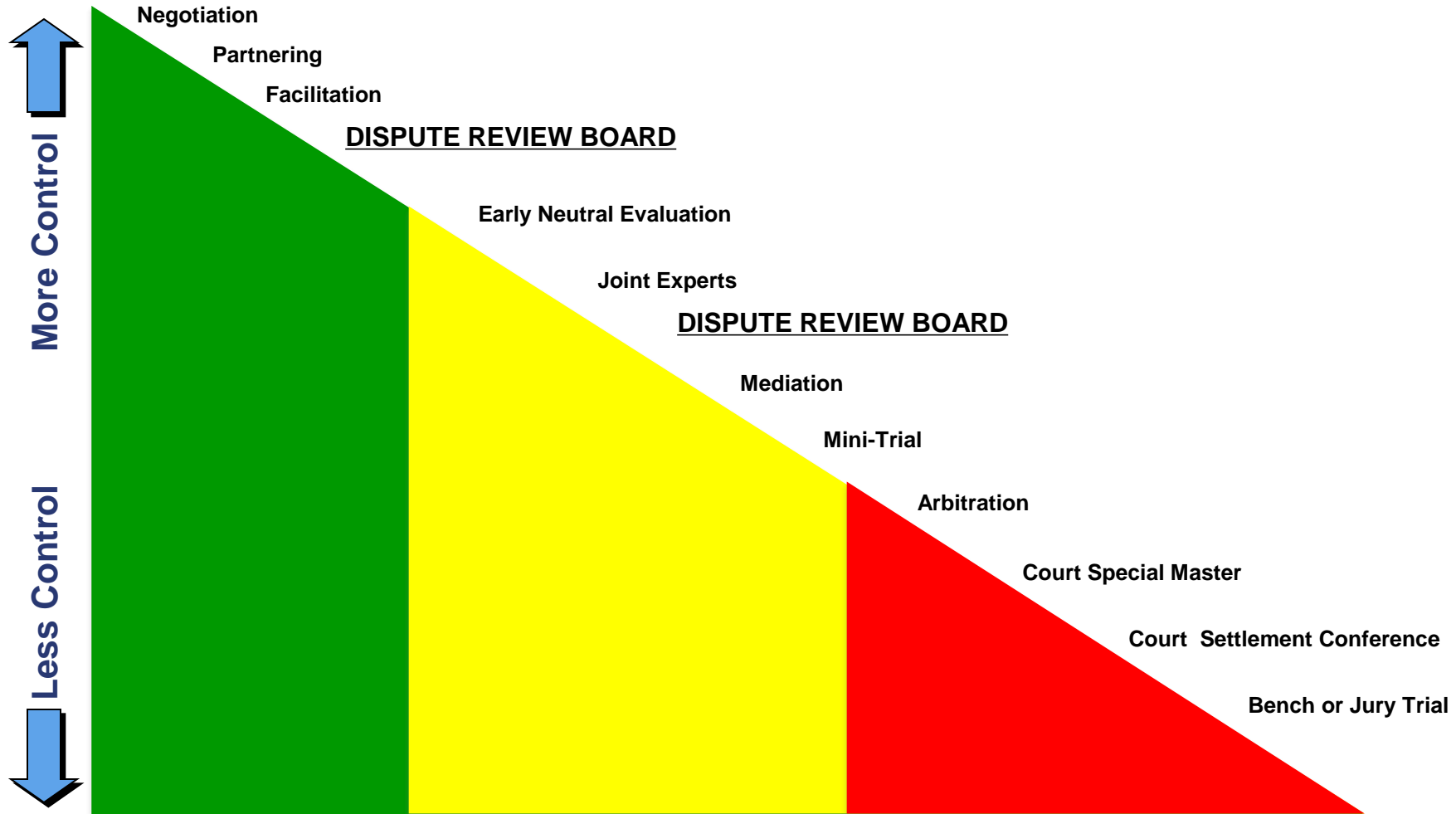
Negotiation

Arbitration

Litigation

← Low Cost Resolution

High Cost Resolution →



# ADR Continuum

# Shortcomings of Negotiation

**Timing** – Too busy building the job to negotiate. Takes time to prepare for negotiation. Issues aren't always brought forward in a timely manner.

**Relationships** – Often adversarial. Negotiation is voluntary. Both parties must be willing to negotiate. Power is not distributed equally.

**Accuracy of Information-** Written records may not have been maintained. Differing recollections. Poor memories.

**Personal Factors** – Posturing. Not listening to the other party. Passion for your position. Caring too much.

**Strategy** – Too much focus on price. Trying too hard to “Win”, instead of looking for a “Win-Win”. Effect of Precedent.

**Outcome** – If negotiations fail, **the Dispute Still Exists**



# Shortcomings of Arbitration

**Timing** – Arbitration only after Final Acceptance of the project. Can be requested up to 820 days after Final Acceptance.

**Accuracy of Information-** Timing affects accuracy. Memories fade. Key people may no longer be available. Written records are difficult to maintain.

**Process** – Request for arbitration followed by rebuttal from the other party. Time and date set for evidentiary hearing.

**Costs** – Parties prepare and submit evidence, and exchange documentation in advance of the hearing. Lawyers are typically heavily involved. Significant cost in terms of people time and money.

**Arbitrators** – Very qualified, but never know the whole story, since they were not involved during the project.

# Shortcomings of Litigation

**Timing** – No resolution until long after the project is complete.

**Accuracy of Information**- As in Arbitration, but potentially worse. Accuracy. Memories fade. Key personnel availability. Written records.

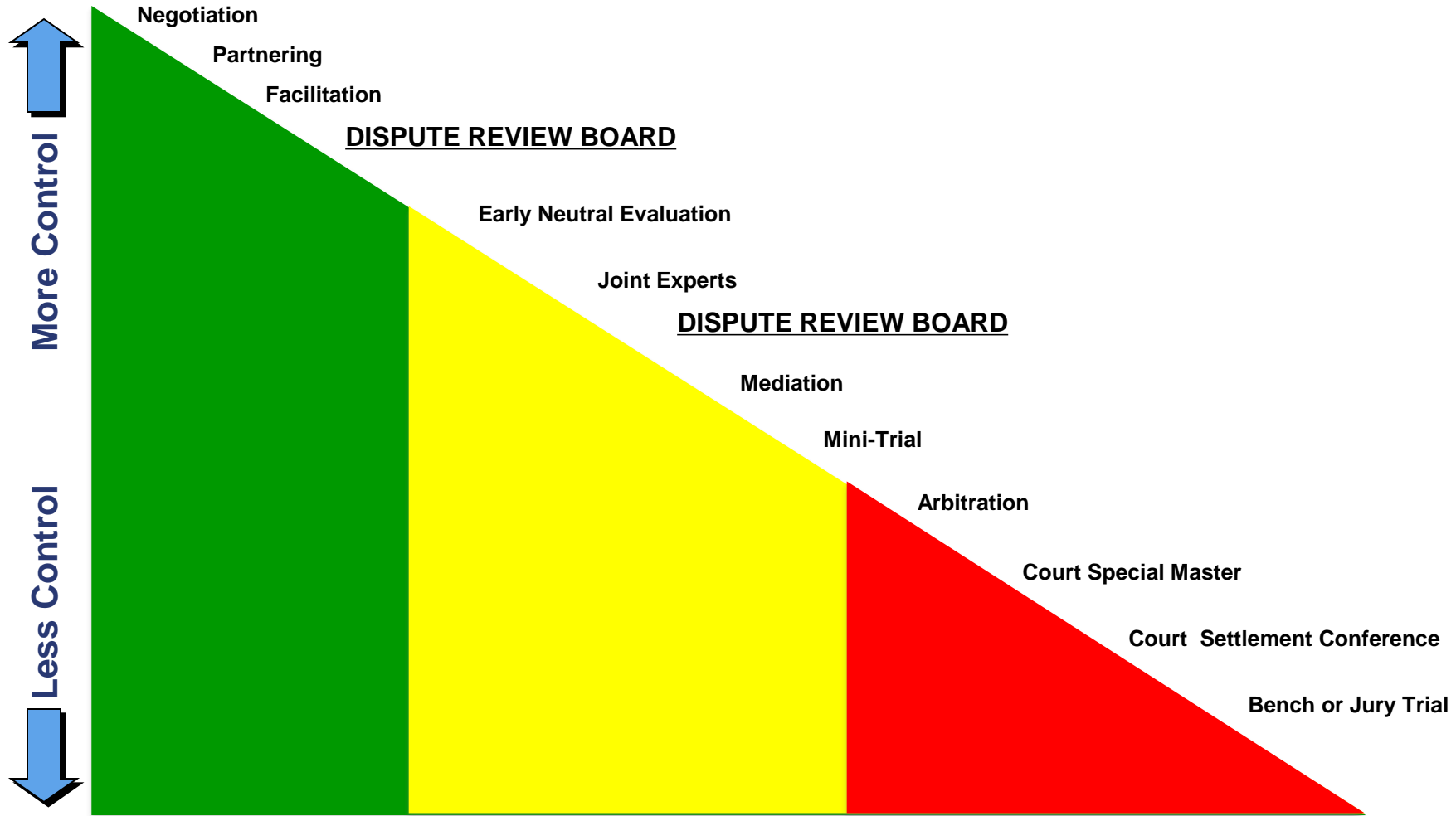
**Process** – More Lawyers. Discovery. Depositions. More case preparation and documentation. Find and hire Expert Witnesses. More Depositions. Mediation. Preparation for Trial. Much more Time and Money.

**Judges and Jurors** - They typically know nothing about construction or engineering. Lawyers are lawyers. Decisions ultimately rendered on other than a true technical basis.

**Results** – Huge uncertainty in going to trial. Can be extremely unpredictable.

← Low Cost Resolution

High Cost Resolution →



# ADR Continuum

# Step 1 Contractor Sues FDOT

- FDOT Attorney must file answer to plaintiff's complaint
- FDOT Attorney must get up to speed on project information, project issues, timelines, documentation, history of previous attempts to resolve, etc.
- Primary source is Project Engineer or Project Manager and other Project Personnel

## Step 2 Pretrial Discovery

- Both Parties required to produce documents
  - Copies of all correspondence from anyone including construction and design development
  - Copies of all project documents including construction and design development
- Both Parties require depositions (testimony under oath) from all principal personnel
  - Project Engineer, Project Manager, Inspector, Designers, District Construction Engineer, etc.

# Step 3 Your Deposition

- Prepare for **your** Deposition with FDOT attorneys
- **You** will be asked questions by the opposing attorney
- **You** only get to answer the questions asked
- Depositions are stressful (**You** might rather have a root canal)
- They can last for hours

# Step 4 Case Preparation

- Detailed case arguments are prepared with FDOT attorneys
- Research and preparation of supporting documentation is extremely important
- For **You** - More stress; More fun

# Step 5 Expert Witnesses

- Each side hires expert witnesses
- Experts research project records, ask questions of project personnel
- Experts give their depositions
- **You** must review expert reports and depositions from both sides
- For **You** - More stress; More fun



## Step 6 Mediation

- Court requires a mediation hearing before trial
- The parties meet with the mediator and try to resolve issue
- **You** must prepare in advance with your attorney
- Mediation meeting takes all day
- For **You** – Even more stress; Even more fun

## Step 7 Trial

- **You** must prepare with attorney for trial testimony
- **You** must attend trial and give testimony (you only get to answer questions asked)
- Attorneys may or may not accurately present the real issues
- Decision is made by people who do not know anything about your work
  - They know nothing about your contract
  - They know nothing about engineering
  - They know nothing about how to build roads and bridges

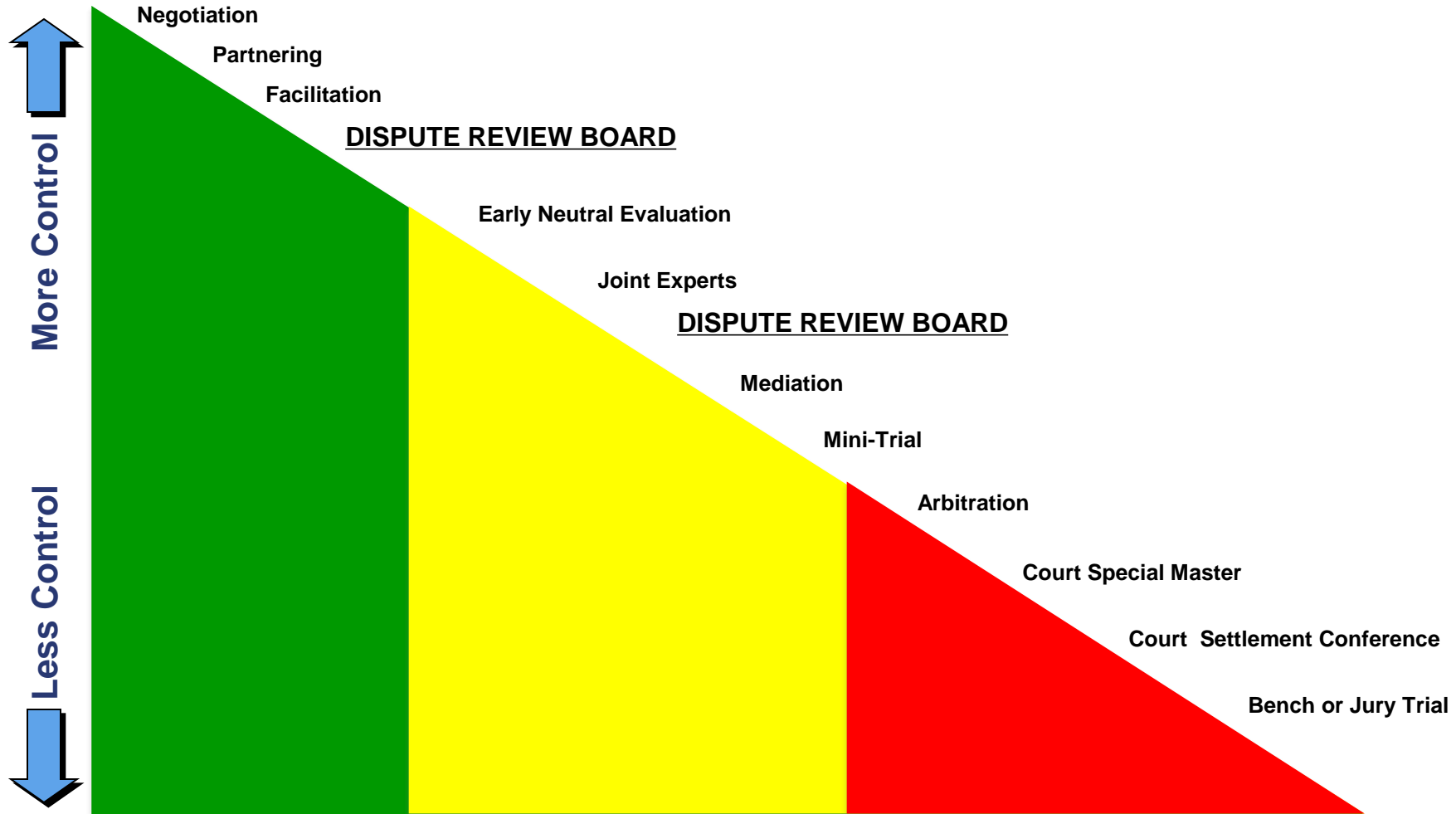
# The Final Result In Terms of Time and Money

Case Study (from an article by Roger Peters)

- \$550 Million Design/Build Bridge and Highway Project
- Over \$80 Million in Claims and Counterclaims between the Contractor and its Engineering Subcontractor
- Over 100 Depositions
- Over \$12 Million in Legal and Consultant Fees
- Over 40 days of Arbitration Hearings over 6 months
- Arbitration panel awarded a little over \$1 Million to the Contractor

← Low Cost Resolution

High Cost Resolution →



# ADR Continuum

# What is a DRB?



A Dispute Review Board (DRB) is a board of **impartial professionals** formed at the **beginning of the project** to follow construction progress, **encourage dispute avoidance**, and **assist in the resolution of disputes** for the duration of the project

# How Effective are DRBs?

The Dispute Resolution Board Foundation, based on database results collected and a recent international study, reports on over 2,800 projects valued at over \$275 billion.

*“Resolution rate to date: **85-98%** of matters going to the DRB do not go on to arbitration or litigation.”*

# How Effective are DRBs?

In 2013, Dr. Ralph Ellis and Dr. Duzgun Agdas of the University of Florida published a scholarly paper presenting results of a research project undertaken to assess the impact of DRBs on FDOT's construction program. They studied approximately 3,000 FDOT projects over a ten-year period, 2000 – 2009, looking at three quantitative dimensions of DRB impact.

1. How does the presence of a DRB affect the performance of project cost and schedule?
2. How effective are DRBs in avoiding and resolving disputes?
3. What are the costs of DRBs?

# How Effective are DRBs?

The research results were published in the *ASCE Journal of Legal Affairs & Dispute Resolution in Engineering and Construction* in August 2013:

1. Projects with DRBs faced reduced costs and schedule growth (6.88 and 12.92%, respectively) when compared to non-DRB projects (11.53 and 28.96%).
2. Projects with DRBs resulted in reduced arbitration; DRBs were shown to have a success rate of 97% in settling disputes.
3. The costs of DRBs was found to be approximately 0.3% of total project budgets.



## DRB Core Principles

- Panel of three, experienced, respected Board Members, selected impartially
- Board formed before construction begins
- Board meets periodically at the project site and keeps abreast of progress and issues
- Board encourages resolution of issues at the lowest possible level
- Hearings may be requested by either party
- Hearings are held promptly and are informal
- Board recommendations are not binding, but may be considered by arbitration boards and trial courts

# DRBs at Florida DOT



The role of the Dispute Review Board is to provide specialized expertise in technical areas and in administration of construction contracts to assist the Department of Transportation and the Contractor in resolving disputes in a timely and equitable manner

# History of DRBs at Florida DOT



- FDOT began using DRBs in 1994
- FDOT is seen as the national governmental agency leader in the effective use of DRBs
- FDOT has developed clear contract specifications, operating guidelines, and operating procedures for DRBs

# Types of DRBs at Florida DOT



- Contract Specific DRBs (Project DRBs)
  - Most Common
  - Large or More Complex Projects
- Regional DRBs
  - Applicable on Smaller Projects
- Statewide DRBs
  - Specific Technical Areas
  - Asphalt; Concrete Pavement; Structures

# FDOT Dispute Review Board Website

[Home](#) / [Construction](#) / [CONSTADM](#) / [DRB](#)

## Dispute Review Board

The role of the Dispute Review Board is to provide specialized expertise in technical areas and in administration of construction contracts to assist the Department of Transportation and the Contractor in resolving disputes in a timely and equitable manner.

### DRB General Information

- [Dispute Resolution Board Foundation Website](#)
- [Guidelines For Operation of Regional DRB](#)
- [DRB Operating Procedures](#)
- [Three Party Agreement Form # 700-011-02](#)
- [DRB Supplemental TPA](#)

### DRB Member Information

#### List of Candidate Members

- [DRB Active Members List](#)

#### [Regional DRB Members](#)

#### [Statewide DRB Members \(Asphalt/Concrete Pavement/Structures\)](#)

### DRB Recommendations (by District)

- [District 1 Recommendations](#)
- [District 2 Recommendations](#)
- [District 3 Recommendations](#)
- [District 4 Recommendations](#)
- [District 5 Recommendations](#)
- [District 6 Recommendations](#)
- [District 7 Recommendations](#)
- [Turnpike Recommendations](#)

For questions regarding DRB, please contact:  
[Scott Arnold](#)

# Contract Provisions Related to DRBs



- Standard Specification 4-3.2
- Standard Specification 5-12
- Special Provision for Project DRBs
- Special Provision for Regional DRBs
- Special Provision for Statewide DRBs

# Standard Specification 4-3.2

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of

# Standard Specification 5-12

## **5-12 Claims by Contractor.**

**5-12.1 General:** When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.



# Standard Specification 5-12

## **5-12.2 Notice of Claim:**

**5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit written notification to the Engineer of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such written notification is not submitted and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original

# Special Provision for Contract Specific DRBs

## **PROSECUTION AND PROGRESS - PROSECUTION OF WORK - DISPUTES REVIEW BOARD.**

**(REV 2-9-21) (FA 2-18-21) (1-22)**

ARTICLE 8-3 is expanded by the following new Subarticle:

**8-3.7 Disputes Review Board:** For this Contract, a Disputes Review Board (Board) will be established to assist in the resolution of disputes and claims arising out of the work on the Contract and will operate under the latest version of the Department's 'DRB Operation Procedures' posted online and be available for regular Board project meetings, virtual meetings and hearings.

**8-3.7.1. Purpose:** The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor (Parties) in an effort to avoid construction delay and future claims.

# Special Provision for Regional DRBs

## **PROSECUTION AND PROGRESS - PROSECUTION OF WORK – REGIONAL DISPUTES REVIEW BOARD.**

**(REV 2-8-21) (FA 2-18-21) (1-22)**

ARTICLE 8-3 is expanded by the following new Subarticle:

**8-3.7 Regional Disputes Review Board:** For this Contract, a Disputes Review Board (Board) will be available to assist in the resolution of disputes and claims arising out of the work on the Contract.

# Special Provision for Statewide DRBs

## **PROSECUTION AND PROGRESS - PROSECUTION OF WORK – STATEWIDE DISPUTES REVIEW BOARD.**

**(REV 6-27-19) (FA 8-14-19) (1-22)**

ARTICLE 8-3 is expanded by the following new Subarticle:

**8-3.8 Statewide Disputes Review Board:** For this Contract, a Statewide Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the administration and enforcement of a specification when such specification specifically refers disputes to this Board.

# Other Key Documents Related to DRBs

Operating  
Procedures

Three Party  
Agreement

CPAM  
Section 3.4

# DRB Operating Procedures

## Dispute Review Board

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### DRB Operating Procedures

#### **1 - GENERAL:**

1.1 These procedures are for the purpose of providing processes for operation of the Disputes Review Board (DRB) and are intended to be flexible to meet circumstances that may arise during the life of the project. "Dispute" as referenced in this procedure is defined as a disagreement between the Florida Department of Transportation ("Department") and the Contractor (referred to herein as the parties) where the Contractor has submitted, in accordance with **Standard Specification 5-12**, a notice of intent to seek additional compensation but has not yet submitted a written claim in accordance with **Standard Specification 5-12.3**. "Claim" as referenced in this procedure is defined as a written demand submitted to the Department by the Contractor in compliance with **Standard Specification 5-12.3** seeking additional monetary compensation, time, or other adjustments to the Contract, the entitlement or impact of which is disputed by the Department.

1.2 The role of this DRB is to provide specialized expertise in technical areas and in administration of construction contracts to assist the Department and the Contractor in resolving disputes or claims in a timely and equitable manner. Within the context of partnering, the DRB serves to assist the parties in working through disagreements.

# DRB Three Party Agreement

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**DISPUTE REVIEW BOARD**  
**THREE PARTY AGREEMENT**  
*(EFFECTIVE JULY 2021 LETTINGS)*

700-011-02  
CONSTRUCTION  
OGC - 7/21  
Page 1 of 10

**THIS THREE PARTY AGREEMENT**, hereinafter called "**AGREEMENT**", made and entered into this [ ]

day of [ ], 20[ ] between the State of Florida Department of Transportation, an agency of the State of Florida, hereinafter called "**DEPARTMENT**"; and [ ], hereinafter called the "**CONTRACTOR**"; and the Dispute Review Board, hereinafter called the "**BOARD**", and consisting of three members: [ ], [ ], and [ ].

WITNESSETH, that

WHEREAS, the **DEPARTMENT** is now engaged in the construction of (FPID [ ]), and;

WHEREAS, the Contract # [ ] provides for the establishment and operation of the **BOARD** to assist in resolving disputes and claims; and

WHEREAS, the **BOARD** is composed of three members, one selected by the **DEPARTMENT**, one selected by the **CONTRACTOR**, and the third member selected by these two;

NOW THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

# CPAM Section 3.4

## Section 3.4

### DISPUTE REVIEW BOARD

#### 3.4.1 Purpose

The purpose of this procedure is to provide for uniformity in the use of Dispute Review Boards (DRB).

#### 3.4.2 Initiating Specifications

##### (A) Resident Level Responsibilities

All contracts should contain a special provision for either a contract specific Dispute Review Board (DRB) or a Regional DRB (RDRB). Conventional contracts over \$15 million should contain a special provision for a contract specific Dispute Review Board (DRB). The Resident Engineer (RE) also has the option to add a contract specific DRB to projects less than \$15 million, for complex projects, or for projects with a higher than normal probability of issues. For capacity only projects, a RDRB can be deemed sufficient based on the complexity of the project or a decreased probability of issues. Complex Design-Build contracts over \$30 million should contain a contract specific DRB, while smaller and/or less complex Design-Build contracts can utilize a RDRB. If there is no special provision for a contract specific DRB, then there should be one for a Regional DRB (RDRB).



## DRB Member Qualifications

- FDOT maintains a listing of Qualified DRB Active Member Candidates with contact information and resumes
- Qualification listing based on experience, knowledge, standing in the construction industry, expertise in construction, and interpretation of contract documents
- Members have completed a course on DRB Administration and Practice provided by the Disputes Resolution Board Foundation (DRBF). Some Members have completed additional DRBF training on Chairing DRBs

# Dispute Review Board Active Members

## Dispute Review Board - Active Members

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The individuals listed here have met the current qualifications to participate on a Dispute Review Board (DRB).

It is desirable that each potential DRB member have at least ten years of experience with the type of construction involved in a project, in the interpretation of contract documents, and in contract dispute resolution.

\* Members have completed DRB Foundation Chairman Training

# How FDOT DRBs are Formed

- The FDOT Resident Engineer selects a DRB member from the Active List
- Selection reviewed by the District Construction Engineer
- Candidate submits a Resume and Disclosure Statement
- Selection is submitted for the Contractor's review, who has the right to object to the selection

# How FDOT DRBs are Formed

- Likewise, the Contractor selects a DRB member from the Active List
- Selection is submitted to the Resident Engineer for review, in consultation with the District Construction Engineer
- Candidate submits a Resume and Disclosure Statement
- FDOT has the right to object to the selection

## How FDOT DRBs are Formed

- Once the FDOT and Contractor selections have been finalized, the two DRB Members nominate a third DRB member, who acts as the Chairperson of the DRB
- The nominated candidate submits a Resume and Disclosure Statement
- FDOT and the Contractor have the right to object to the selection

## How FDOT DRBs are Formed

- Once all three DRB Members have been approved, the Three Party Agreement is prepared and digitally signed by all DRB Members, the Contractor, and FDOT
- DRB members do NOT represent or advocate for the party who selected them
- Results in a neutral DRB with impartial members experienced in the contract work
- Ideally, the DRB should be in place at the time of the pre-construction conference

# Why DRBs?

- We all know that all construction projects experience change – stuff happens
- Changes often precipitate conflicts
- In conflict resolution, the first step is to create an effective resolution atmosphere
- In a less adversarial process, construction becomes less costly for the Contractor and the Owner, i.e., avoiding litigation
- From a 1993 survey, 92% of construction industry respondents agreed that a dispute resolution process should attempt to prevent as well as resolve disputes

# How FDOT DRBs Operate

- DRB members are provided access to all Contract Documents to become familiar with the project
- DRBs meet periodically at the project site and keep abreast of project developments
- DRBs generally meet monthly for the first three to six months, and not less than quarterly thereafter
- Meeting frequency adjustments are decided jointly by the FDOT and the Contractor
- On projects with unresolved issues, DRBs should meet monthly



# How FDOT DRBs Operate

- On all matters relating to DRBs, parties communicate only through the Chair
- DRB meetings are scheduled to coincide with regular project progress meetings
- An agenda is prepared in advance by the Chairman and FDOT representative, developed along the prototype example in the Operating Procedures
- DRB members are given a project tour, highlighting work in progress and work accomplished since the last meeting

# How FDOT DRBs Operate

- The DRB Chairman conducts the meeting, with the Contractor and FDOT representatives updating the Board on project progress, developments, and issues
- Every DRB member can ask questions or seek clarification from the Contractor and FDOT representatives
- The DRB constantly reminds and encourages the parties to resolve evolving issues in a timely manner at the lowest level possible
- For disputes that may arise, the DRB reminds and encourages the Contractor of the importance of preserving its rights in a timely manner under terms of the contract documents, by issuing a Notice of Intent (NOI)

# How FDOT DRBs Operate

- The DRB pays particular attention to the status of NOIs in every meeting, including new and updated NOIs
- DRBs typically use open questions to encourage discussion among the parties
- FDOT provides minutes of the meetings, distributed to all parties and approved in the next meeting
- DRB Members are compensated by the Contractor through a No Bid pay item established in the contract by FDOT

# Hearing Requests

## Submitting Disputes to the DRB

- The DRB encourages the parties to resolve potential disputes without resorting to use of the DRB
- An escalation process is established early in the project that clearly outlines the steps leading to submission of an issue to the DRB
- However, when it becomes apparent that resolution is unlikely to be accomplished by negotiation, a dispute or claim should be moved as promptly as possible to the DRB for its consideration

# Hearing Requests

## Submitting Disputes to the DRB

- The Contractor or the FDOT may request a hearing to obtain a DRB recommendation concerning a dispute
- Only disputes or claims that have been duly preserved under the Contract, as determined by the Board, will be eligible to be heard
- The requesting party must furnish a written request for a hearing to the DRB Chairman, with concurrent copies to the other DRB members and the other party
- Written request should provide a concise issue statement and a summary of relevant issues

# Hearing Requests

## Submitting Disputes to the DRB

- Responding party may furnish a concise issue statement to the Chairman with concurrent copies to the other DRB members and the other party
- The DRB Chairman will schedule a hearing no earlier than 20 days after receiving the request for a hearing
- Full position papers must be submitted by each party and must be accompanied by supporting documents which are numbered and referred to in the position paper by page number

# Hearing Requests

## Submitting Disputes to the DRB

- Full position papers are due 15 days prior to the scheduled hearing and are submitted directly to each DRB member and to the other party
- Each party may submit a rebuttal statement to the other party's position statement no later than 5 days prior to the hearing date
- For complex disputes, the DRB may meet privately in advance of the hearing to review the issues

# Hearing Requests

## Submitting Disputes to the DRB

- DRB may also hold a pre-hearing conference with the parties to discuss hearing procedures
- At least 5 days prior to the hearing, both parties should furnish to the DRB members and the other party a list of people who will attend the hearing and represent them



# Conduct of the Hearing

- Hearings are normally held at the project site
- Hearing procedure is informal
- The party initiating the hearing will first discuss the dispute followed by the other party
- Each party will be allowed successive rebuttals until all information is presented
- DRB members may ask questions

# Conduct of the Hearing

- If new information not contained in the initial position papers is presented, the protesting party may be given a continuance of up to 30 days to research the issue and prepare a rebuttal
- Attorneys are discouraged from attending DRB meetings or hearings
- No oral participation of either party's attorneys or independent claims or technical experts permitted except as direct response to questions asked by the DRB

# Conduct of the Hearing

- Normally, no formal record of the hearing will be kept
- Audio or court reporter recording will only be permitted if agreed to by both parties
- The requesting party will bear the cost
- The DRB will be provided 4 copies of the transcript and the other party will be provided 1 copy

# Issuance of DRB Recommendations

- The DRB will meet privately following the hearing to develop a recommendation
- The recommendations will be based on the pertinent contract provisions and the facts and circumstances involved in the dispute or claim
- All individual views of the DRB members will be kept strictly confidential
- If additional information is required, the DRB may schedule a follow up hearing

# Issuance of DRB Recommendations

- A written recommendation with supporting logic will be provided by the DRB within 15 days of the hearing date
- DRB written recommendations generally focus on entitlement, leaving the parties to negotiate quantum
- In the event the DRB is not able to reach a unanimous decision, the dissenting member may provide a minority opinion to be furnished with the recommendation
- The dissenting DRB member will not be revealed

# Reconsideration of DRB Recommendations

- Both parties should place weight upon DRB recommendations, but they are not binding
- Either party may request a reconsideration of a recommendation by the DRB
- Reconsideration should only be considered when there is new information
- If the DRB feels that the request for reconsideration is meritorious, it will honor the request. Usually, a new hearing is not required

# Regional DRBs

- Based on the early success of DRBs for large projects, FDOT made the decision that all projects, even small ones, should use DRBs to resolve disputes
- Regional DRBs consist of five members pre-selected by FDOT and the FTBA, one per year, alternating
- Board members serve for five years, the first two as an alternate, the last as chair
- No regular meetings
- Regional DRBs conduct hearings essentially the same as Project DRBs

# Regional DRBs

## Regional DRBs

<b>District 1:</b>	<b>District 2:</b>	<b>District 3:</b>
<a href="#">Marshall Dougherty, Jr.</a>	<a href="#">Pat McCann</a>	<a href="#">Edward Minchin</a>
<a href="#">David (Mick) Jameson</a>	<a href="#">Jim Davis</a>	<a href="#">Rammy Cone</a>
<a href="#">James Guyer</a>	<a href="#">James MacLaughlin</a>	<a href="#">David VanLeuven</a>
<a href="#">Richard (Rick) Roberts</a>	<a href="#">Ken Fusch</a>	<a href="#">Freddie Simmons</a>
<a href="#">Earle Cooper</a>	<a href="#">Richard Rountree</a>	<a href="#">Jim Davis</a>
<b>District 4 &amp; 6 &amp; Turnpike S. of Indian River County</b>	<b>Districts 5 &amp; Turnpike, Indian River County North</b>	<b>District 7:</b>
<a href="#">Don Cronk</a>	<a href="#">Don Cronk</a>	<a href="#">John Duke</a>
<a href="#">Rick Espino</a>	<a href="#">Murray Yates</a>	<a href="#">Matthew Michalak</a>
<a href="#">Ralph Ellis</a>	<a href="#">Ernest Wolf</a>	<a href="#">John Padavich</a>
<a href="#">Ken Fusch</a>	<a href="#">Earle Cooper</a>	<a href="#">Paul Harkins</a>
<a href="#">Matthew Michalak</a>	<a href="#">Edward Minchin</a>	<a href="#">Richard (Rick) Roberts</a>



# Statewide DRBs

- National trends in the Mid-2000s were toward Performance and End Result Specifications
- FDOT looked for Contractor Warranties
- Bonding Capacity was a big issue for Contractors
- FDOT and FTBA developed an Innovative alternative
- Performance backed by Contractor Prequalification
- Statewide DRBs were established to deal with disputes

# Statewide DRBs

- With so much at stake, disputes should be decided by experts in the applicable technical area, not by more general expertise of most DRB members
- Statewide DRB categories are Warranted Asphalt, Concrete Pavement and Structures
- Unlike other FDOT DRBs, the decisions of Statewide DRBs are binding on FDOT and the Contractor
- Statewide DRBs are separate from Project DRBs or Regional DRBs on a project

# Statewide DRBs

## Statewide DRB Members

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Warranted Asphalt	Concrete Pavement	Structures
<a href="#">Scott Cushing</a>	<a href="#">Michael Bienvenu</a>	<a href="#">Antonio Garcia</a>
<a href="#">Jon Chellgren</a>	<a href="#">Richard Lehman</a>	<a href="#">Frank Wilson</a>
<a href="#">Jim Musselman</a>	<a href="#">Mang Tia</a>	<a href="#">William Nickas</a>
<a href="#">Barry McKeon</a>	<a href="#">Tom Malerk</a>	

# Special Provision for Statewide DRBs

PROSECUTION AND PROGRESS - PROSECUTION OF WORK -  
STATEWIDE DISPUTES REVIEW BOARD.  
(REV 6-27-19 ) (FA 8-14-19) (1-22)

Changes to: 8-3.

SP0080308SDRB

334, 337, 350, 570, or 649 Items

## **PROSECUTION AND PROGRESS - PROSECUTION OF WORK – STATEWIDE DISPUTES REVIEW BOARD.**

**(REV 6-27-19) (FA 8-14-19) (1-22)**

ARTICLE 8-3 is expanded by the following new Subarticle:

**8-3.8 Statewide Disputes Review Board:** For this Contract, a Statewide Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the administration and enforcement of a specification when such specification specifically refers disputes to this Board.

# Statewide DRBs

- Section 334 – Superpave Asphalt Concrete
- Section 337 – Asphalt Concrete Friction Courses
- Section 350 – Cement Concrete Pavement
- Section 475 – Value Added Bridge Components (D-B)
- Section 570 – Performance Turf
- Section 649 – Galvanized Steel Poles, Mast Arms and Monotube Assemblies

# DRB Advisory Opinions

- From DRB Operating Procedures: *During meetings, site visits and hearings, no DRB member will express any opinion concerning the merit of any facet of a case or a potential dispute*
- Historically, Advisory Opinions have not been permitted
- FDOT has changed its DRB Special Provision to include language permitting Advisory Opinions

# DRB Advisory Opinions

**8-3.7.2.1 Advisory Opinions:** At the request of either Party, the Board may provide a preliminary informal review to assist in the early resolution of any emerging disputes through an Advisory Opinion. Advisory Opinions may be provided during any regularly scheduled project meeting provided that the Party requesting the Advisory Opinion informs the Board and the other Party of the disputed issue at least one week before the meeting at which an Advisory Opinion will be sought.

Advisory Opinions will be informal oral discussions between the Board and the Parties in the presence of all parties. No formal position papers, written summaries, or presentations of any kind shall be provided to the Board and no written findings or recommendations will be provided from the Board to the Parties.



# DRB Advisory Opinions

The Board will fairly and impartially consider emerging disputes referred to it and will provide informal Advisory Opinions to the Parties to assist in the resolution of these emerging disputes.

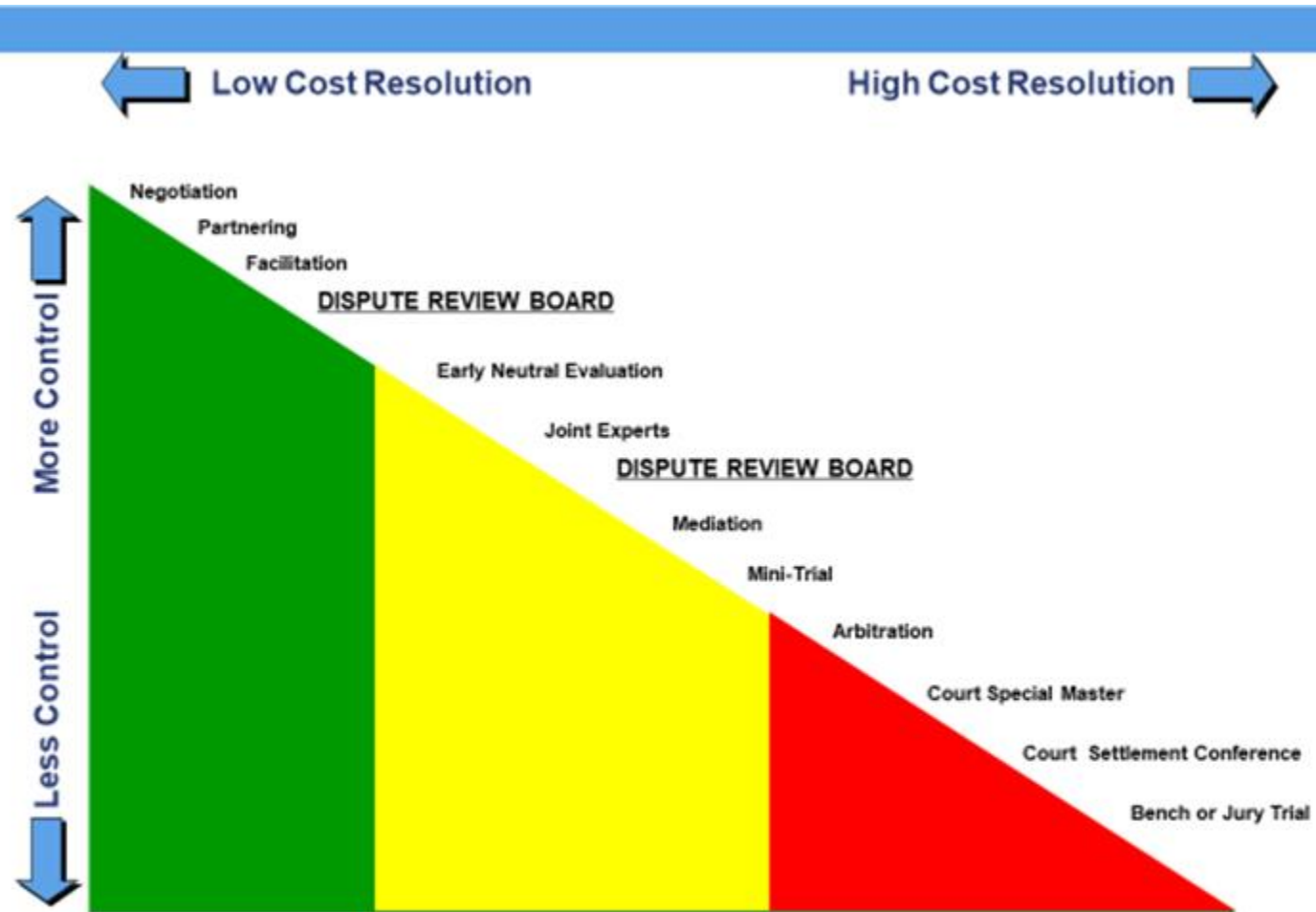
Advisory Opinions provided by the Board will not be binding on either Party.

If the Board is later called upon to issue a recommendation in connection with an emerging dispute on which it has provided an Advisory Opinion, the Board shall not be bound by any previous statements, discussions, or opinions that it may have made in the course of an Advisory Opinion, nor shall it take into account any prior Advisory Opinions in the consideration of a formal recommendation.





# Beyond DRBs



## ADR Continuum

# Why DRBs?? Dispute Review Board Foundation

- DRBF Annual Meeting Survey in 2001:
  - 100% agreed that conflict creates an emotional cost in terms of deterioration of relationships between parties
  - 98% agreed that conflict is physically and emotionally draining
  - 100% agreed that conflict reduces job satisfaction
  - 87% agreed that disputes undermine construction progress
- A less adversarial Construction process could become more cost effective for the Owner and the Contractor

# Why DRBs?? Owner's Perspective

- *Affect Future Behavior* while the project is ongoing
- *Elicit Cooperation* that is effective among parties
- *All Stakeholders Can Participate* in decision process
- *Validation of Owner's Decisions* in a political sense
- *Projects are More Collegial*, less adversarial
- *No Surprise Claims* after project completion

# Why DRBs?? Contractor's Perspective

- Many of the same, including *Future Behavior, Eliciting Cooperation, Stakeholder Participation, More Collegial*
- *Early Recognition* and discussion of issues that can impact cost and schedule
- Parties get to clearly state and *Understand Respective Positions*, hopefully helping break impasses earlier
- Can *Encourage More Competition*, especially on large and complex projects

# Why DRBs?? FDOT's Perspective

- THEY WORK!!
- Mutual Resolution
- Positive Relationships
- Open Communication
- Trust and Cooperation
- Minimizes Posturing
- Early Identification of Issues

# Why DRBs?? FDOT's Perspective

- Reduced Job Delays
- Better Informed Decisions
- Keeps Things “Real”
- Extremely High Resolution Rates
- Drastically Reduced the Amount of Litigation
- Benefits a Large, Aggressive Work Program

# Why DRBs??

## FDOT's Perspective

### DRB Recommendations (by District)

- [District 1 Recommendations](#)
- [District 2 Recommendations](#)
- [District 3 Recommendations](#)
- [District 4 Recommendations](#)
- [District 5 Recommendations](#)
- [District 6 Recommendations](#)
- [District 7 Recommendations](#)
- [Turnpike Recommendations](#)

Any Questions?!



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(850) 445-8630

For Questions regarding DRBs, please contact:  
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