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DOES YOUR CONSTRUCTION CONTRACT PROVIDE FOR A "PROJECT NEUTRAL" TO RESOLVE DISPUTES?"

June 30, 2016

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Disputes on construction projects are inevitable. One of the most important risk management tools for construction participants is a quick and effective dispute resolution procedure. Dispute resolution can be accomplished through various methods, including traditional mediation, arbitration and litigation. However, construction parties are using pre-selected neutrals to serve the parties as real time dispute facilitators more frequently. This concept envisions that the parties select one or more independent construction industry experts at the beginning of the project pursuant to a provision in a construction agreement.

A “project neutral,” sometimes referred to a “standing neutral,” “referee,” or “standing mediator” is a trained alternate dispute resolution specialist, who is familiar with the project plans and specifications, keeps up to date on a project’s status, and is on call during the construction project to help resolve disputes that cannot be settled by the parties. A project neutral is generally a consultant who provides non-binding opinions or a mediator who facilitates the parties’ negotiations, unlike an arbitrator, who makes decisions that bind the parties. A dispute review board, similar to the project neutral process, typically uses a panel of three members rather than a single neutral.

One key advantage of a project neutral is to allow the parties to resolve disputes quickly and efficiently when they arise. It also allows the project team to maintain control of the claim without the outside intervention of third parties, such as arbitrators and courts. Early dispute resolution helps avoid project delays, including delays in construction and financing, and potentially costly and time-consuming arbitration or litigation. A project neutral can objectively analyze and evaluate specific issues of liability, costs, schedule impact and damages, and make recommendations to the parties. Although a project neutral draws conclusions, makes recommendations and gives advice, he or she does not make a decision for the parties.

The ConsensusDOCS contract forms released in 2007 provide for a project neutral or dispute resolution board as one of the dispute resolution options available to the parties. A standing neutral arrangement was also contained for the first time in the 2007 edition of the American Institute of Architects (AIA) Documents. The AIA forms allow the parties to designate an independent neutral third-party “Initial Decision Maker” (IDM) in the contract if they do not wish the architect to serve in that capacity.

There are a myriad of alternative dispute resolution options available to parties in the construction industry. Construction parties should consider using project neutrals to help resolve disputes as they arise during the project as the neutral can provide the parties with a fast and private resolution of disputes that helps preserve the relationship of the parties and minimize the impact on the project. Selection of the appropriate mechanism will largely depend on the facts and circumstances of each project.

For more information on this topic, please contact Jeff Wertman on the firm’s Dispute Resolution Team.

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