

Construction

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Alternative dispute resolution

*A kinder, gentler way to
end conflicts*

**Reduced overhead =
maximized profits**

**Staying safe on the job
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220 Continental Drive
Suite 112
Newark, DE 19713-4309
302-737-6200
800-347-0116

Alternative dispute resolution

A kinder, gentler way to end conflicts

Given the choice, few construction companies would take project battles to court. Litigation is too expensive, time-consuming and contentious.

Fortunately, contractors have a choice that allows them to settle project disputes in a much more amenable and expedient environment. It's called alternative dispute resolution, or ADR.

ADR to the rescue

ADR is useful in resolving disagreements on project scope, delays, accelerations, obstructions, condition changes, environmental issues, cost overruns and other issues. Options for resolving disputes include arbitration, dispute review board, mediation, negotiation and partnering, as described below.

Arbitration. This is the most common and formal type of ADR. In it, a third, neutral party (the arbitrator) makes a binding decision to settle the disagreement. Arbitrators may be lawyers, businesspeople with construction expertise or other qualified professionals.

Arbitration progresses much like a court proceeding, but is less formal. For instance, the strict rules of evidence and procedure required in court are not used in arbitration.

The arbitrator sets the place, date and time of the hearing. Once there, each side presents its evidence and witnesses and then questions the opposing stakeholders' witnesses. After listening to both sides, the arbitrator closes the hearing and issues a decision in writing.

Dispute review board. With this method, the parties set up a three-person panel before construction begins and spell out resolution procedures in the project contract. The contractor chooses one board member and the owner another — each must approve the other's choice — and a third is selected jointly.

Board members are provided with contract plans and specifications, become familiar with project procedures and participants, and receive updates on job progress. The board meets with owner and contractor representatives during regular site visits and encourages resolution of disputes at the job level.



If disputes continue, the board listens to evidence from each side and issues decisions that are binding or recommendations that are nonbinding, depending on the contract terms.

Mediation. In mediation, an independent third party acts as a facilitator to help stakeholders resolve their grievances. Ideally, the parties select an independent mediator before work begins and disputes occur.

The mediator's role is advisory. While suggestions may be offered, the mediator doesn't issue a decision or an award. The stakeholders are responsible for resolving the disagreement.

The participants make presentations to the mediator in a joint session on the strong and weak points of the potential settlement and then meet with the mediator separately. The parties have the power to resolve the conflict or end the mediation process. A successful mediation concludes with a written agreement between those involved.

Negotiation. In negotiating a settlement, stakeholders resolve their differences by coming up with a mutually

agreed-upon solution. They can appoint an individual, such as a lawyer, to help them in negotiations. But the participants — not the lawyer — decide whether to accept or reject a settlement offer.

Partnering. The partnering process is usually established by agreement at the beginning of a project. Participants try to anticipate where problems may occur and then establish a process for resolving issues at the lowest supervisory level.

Partnering, one of the most proactive ways to resolve disputes, encourages participants to abandon traditional adversarial relationships in favor of a more cooperative, team-based approach. Trust and open communication throughout the project are crucial to success.

Choosing a method

In assessing which process is appropriate for your dispute (or potential dispute), think about the circumstances and stakeholders involved. Where one side has power over the other or where one party feels intimidated, for instance, it may be difficult to resolve disputes fairly through processes such as negotiation or mediation.

Barriers caused by gender or cultural differences may also make it hard for the participants to resolve the issues themselves. You may need to choose another ADR process or pursue legal action.

The pros and cons

Keeping disputes out of court helps preserve positive working relationships, controls costs, ensures privacy, enables faster settlements and helps projects run more smoothly.

Ignoring problems or postponing attempts to resolve disagreements creates ill will and can result in contentious legal wrangling down the road — not to mention cost overruns, potential change orders and project delays.

On the other hand, ADR may not be suitable for every dispute. If ADR is binding, you normally forfeit most court protections, including a decision by a judge or jury under formal rules and the possibility of review for legal error by an appellate court.

Plus, costs can skyrocket if participants become adversarial. If a dispute is not resolved through ADR, you may have to invest time and money in both ADR *and* a lawsuit.

A happy ending

Conflicts are a fact of life on construction projects. Going to court is one way to settle disputes, but doing so can be costly and a waste of time and resources. Those who turn to ADR when problems first arise are more likely to be satisfied and see their projects through to a successful completion. *T*

Reduced overhead = maximized profits

Overhead costs can drain a construction company's profits faster than a sieve. While overhead expenses are inevitable, you can plug some of the leaks and recapture money that may be going down the drain.

To better control your overhead, identify your stream of regular expenses, small and large. Some typical expenses and pointers for trimming them include:

Staff. Determine the optimum number of employees for your business by comparing how many employees you need during your slowest times against the number of employees needed on an average day. Staff at the lowest possible level without jeopardizing your ability to provide top-notch service. It's cheaper to pay overtime or bring in temporary help during peak



periods than to keep unnecessary employees on the payroll year round.

Health insurance. Review your coverage costs. Consider shifting some of the burden to employees by having them pay part of their premiums. You can ease the burden on them by implementing a premium-only plan or flexible benefit plan.

Both plans allow employees to pay their portions of insurance premiums on a pretax basis, thus lowering their taxable income. The flexible benefit plan also allows employees to redirect a portion of their salaries to accounts from which they can be reimbursed for other health-care-related expenses tax-free.

Also consider implementing a new Health Savings Account (HSA) plan, which allows your workers to make tax-free contributions for future health care needs when combined with high-deductible health insurance coverage. This will help you save on premium costs.

Office space. Compare your rent payment with what you might pay if you moved. Try to renegotiate your lease, either for a lower rate outright or for a longer (and potentially cheaper) term. Compare lease payments to the monthly cost of owning a building. If you own your building, refinancing at a lower interest rate or over a longer term will reduce your payments.

Contractors whose employees spend most of their time on job sites may want to consider “hoteling,” which refers to two or more mobile workers sharing office space. Instead of traveling back and forth between their individual offices, they work from one office and share desks, phones and other resources.

Utilities. How you heat and cool your office and workspace can also affect overhead costs. Question any abnormally high heating and cooling bills. It’s possible that the utility company may have made a mistake. Also, add insulation, replace old air conditioning units with high-efficiency models and wrap hot water heaters with thermal coverings. Converting to fluorescent lighting will yield considerable savings, too.

Telephones. Owning your own telephones is usually more advantageous than renting. Compare pricing among several local and long-distance providers. If you’re paying for phone lines or other options that you don’t use, have them removed from your account.

Contractors can keep cell phone costs in check by developing a written policy describing what the



company will reimburse and what it won’t. You should only reimburse costs that can be substantiated as actual business usage.

Office supplies. Try buying such items as pens, paper, file folders and paper clips in bulk to get volume discounts. And don’t forget online suppliers — they can often beat your local brick and mortar office supply store prices.

Advertising. Critique the cost and related benefits of advertising your business. Some construction companies pay for ads in several phone directories, which can cost thousands of dollars each year. If you run large ads, consider reducing the size and frequency with which they appear.

You may even want to skip the advertising and focus on producing a Web site to get the word out about your capabilities. Doing so may allow you to cut back on certain expenses such as postage for direct mail campaigns.

Subscriptions. It’s good to keep up to date by reading a variety of business and industry publications, but not at the expense of your profits. Find out if you can get publications at your library or online.

You won’t know how low you can get your overhead until you try. If the task seems overwhelming, cut one category each month to make it more manageable. Examine overhead regularly and you’ll be well on your way to plugging the overhead drain and maximizing your profits. **T**

Staying safe on the job is no accident

It's no secret that construction is dangerous work. In fact, the construction industry tops the list of most deaths of any occupation, according to the U.S. Department of Labor. Falls from buildings, scaffolds and ladders are the leading cause of death, with accidental electrocution and trench cave-ins also ranking high.

Identifying what causes these accidents and developing programs to eliminate the danger will keep your work sites much safer.

Protect from falls

Half of all work-related fatal falls in the United States occur in the construction industry. Common hazards include unprotected wall openings and floor holes, improper scaffold construction, and misuse of portable ladders.

You can minimize the risk of falls by:

- Installing appropriate barriers, such as guard rails and hole covers,
- Using fall restraint and fall arrest systems, such as body harnesses and safety nets, and
- Teaching workers to practice three-point ladder contact, in which they keep one hand and two feet, or two hands and one foot, on ladders at all times.

If you believe you're already doing these things, check your job sites to make sure. Safety measures often fall by the wayside when project schedules accelerate or employees get overconfident.

Control electrical hazards

Electrical hazards abound on construction sites: Working near overhead or underground power lines, as well as using power tools with insulation breaks in cords or receptacles, can electrocute workers. Working with damaged equipment can lead to electrical shock or death.

You can reduce the danger of electrocution by using double-insulated tools and protective equipment, such as insulated gloves. In addition, make sure employees practice proper grounding at job sites and replace equipment with frayed cords, missing ground prongs or cracked tool casings.

Avoid excavation dangers

Trench collapses account for the majority of excavation deaths, according to recent government statistics. Help

workers stay safe by evaluating soil conditions and selecting appropriate ventilation or respiratory equipment.

Moreover, provide safe access into and out of the excavation site and brace trenches adequately. Following rainstorms or other potentially hazardous events, inspect the site and each trench thoroughly before returning to work.

Make safety a priority

Construction hazards often can be eliminated with simple, commonsense steps such as the ones described here. When eliminating them isn't feasible, do what you can to mitigate the danger. If you don't, your chances of completing a project safely decrease significantly — a statistic no one wants to claim. *T*

Helping contractors meet safety regulations



The Occupational Safety and Health Administration (OSHA) and the Associated General Contractors of America (AGC) offer safety training and assistance to construction companies and related organizations.

OSHA's Alliance Program, for example, works in collaboration with construction companies to prevent workplace injuries and deaths. OSHA also has interactive tools on its Web site, www.osha.gov, to help employers and employees address industry-specific hazards, develop comprehensive safety and health programs, and learn more about OSHA standards.

AGC provides training to construction company employees from field workers to presidents. The organization also offers safety and health videos and publications, and it sponsors safety-related meetings and seminars across the country. For more information, visit www.agc.org.

Work smarter, not harder, to improve productivity

Better productivity can go a long way toward improving your construction company's bottom line. While you may be tempted to ask employees to put in more hours to improve productivity, the solution probably lies in working smarter, not harder.

Train managers

Unproductive waiting time can ruin a project schedule and reduce your profits. Because job-site productivity hinges on effective supervision, train your supervisors in sound management principles and techniques. For example, instruct them to plan out the next day's work at the end of each day by making a list of the type of work to be done, the resources required and each task's priority.

Out on the job, supervisors don't have time to make sure workers are effectively using their time, so construction crews must be able to monitor themselves. For that to work, managers need to develop positive worker attitudes in which every employee takes pride in his or her work.

Project managers and job-site supervisors also must realize that they are a living example for the workers. They need to make the most of their time if they want employees to follow suit.

Improve communication

Effective supervisor communication entails properly explaining work processes to workers. If employees aren't informed as to what's expected of them and how projects are progressing, they may develop negative attitudes about the work, the supervisors and the construction company.



Poor communication can also lead to unnecessary redo work and make it impossible to adequately gauge job progress. To make sure workers understand assignments, advise supervisors to get in the habit of asking workers to repeat instructions or to ask questions. This simple step can go a long way toward reducing redos.

Improve safety

The construction industry has one of the highest worker-accident ratios per number of worker hours expended. This is due, in large part, to the nature of the work and job conditions.

Along with the injuries they cause to individuals, accidents hurt worker morale, negatively affect project timelines and cost, and increase insurance premiums.

Keeping job sites clean, providing safety training, identifying and eliminating safety hazards, and recognizing employees who promote and maintain safety are all necessary components of an effective safety program. (See "Staying safe on the job is no accident" on page 5.)

Establish an efficient job site

Supervisors need to decide in advance how to best lay out a project site in terms of efficient placement of trailers, on-site materials and equipment. Poor organization can result in inefficiencies.

As an example, if materials are stored so that workers must walk long distances to get needed items, hours of nonproductive labor time will result. On the other hand, if materials are conveniently located — but stored in the path of workers — the chance of injury may increase.

Manage equipment

Construction equipment should be scheduled and monitored just as labor is scheduled and monitored. Supervisors must budget each significant piece of equipment for a number of both productive and standby hours by project.

Similarly, project controls should include a system for receiving, distributing, handling and returning materials and tools. Carrying insurance for theft — while a good management practice — is not the only answer; in fact, it can be an admission of poor controls.

Implement new technology

New technologies, such as scheduling software, can yield an immediate return on investment through increased productivity. Equally important, improved use of information technology, such as Web-based project management, is an excellent way to boost efficiency.

Web-based project management applications move most, if not all, of the paper associated with a construction project online. Project information, images, CAD drawings and databases can all be shared and updated electronically in real time.

The big picture

An overall program for increased productivity requires everyone to work together. Admittedly, it's not easy to eliminate waste and inefficiencies, but the potential for improvements makes the effort more than worthwhile. **T**

Defensive computing 101

Some say that the only foolproof way to keep your data and information secure is to leave your computers off. Of course, that would defeat the purpose of having them.

So how can you safeguard your computer system from data loss, manipulation, destruction or unauthorized use?

Review the fundamentals

Take some basic precautions to limit the chances of your security being compromised. Start by paying attention to physical security. Don't leave your computer for an extended period of time while you are logged on.

Next, never share passwords with anybody. The longer a password, the better. It should include upper and lower cases, numbers and symbols. The goal is to have a password that is random enough so that guessing it would be impossible.

Also, install a top-notch antivirus application and keep it updated. At the same time, don't neglect your computer's operating system. Keep informed about updates and install them as recommended. If you use

Windows®, allow the system to install security updates automatically.

Take it up a notch

The best way to guard against data loss is to save everything on a file server that is backed up regularly. All data files and application programs should be copied at least monthly and stored off site. Backups should be regularly tested to make sure the process is functioning properly.

Finally, if you plan to dispose of or give away your computers, be sure to erase private or proprietary data from the hard drive. Keep in mind that deleting *files* doesn't delete the *data*. For that, you need software that is designed to scan, erase and repeatedly overwrite your hard drive.

Exercise safe computing

In today's wired world, you can't afford to be reactive when it comes to data security. The accuracy, completeness and, in some cases, the confidentiality of your company's data are only as good as the precautions you establish to guard against accidents and misuse. **T**