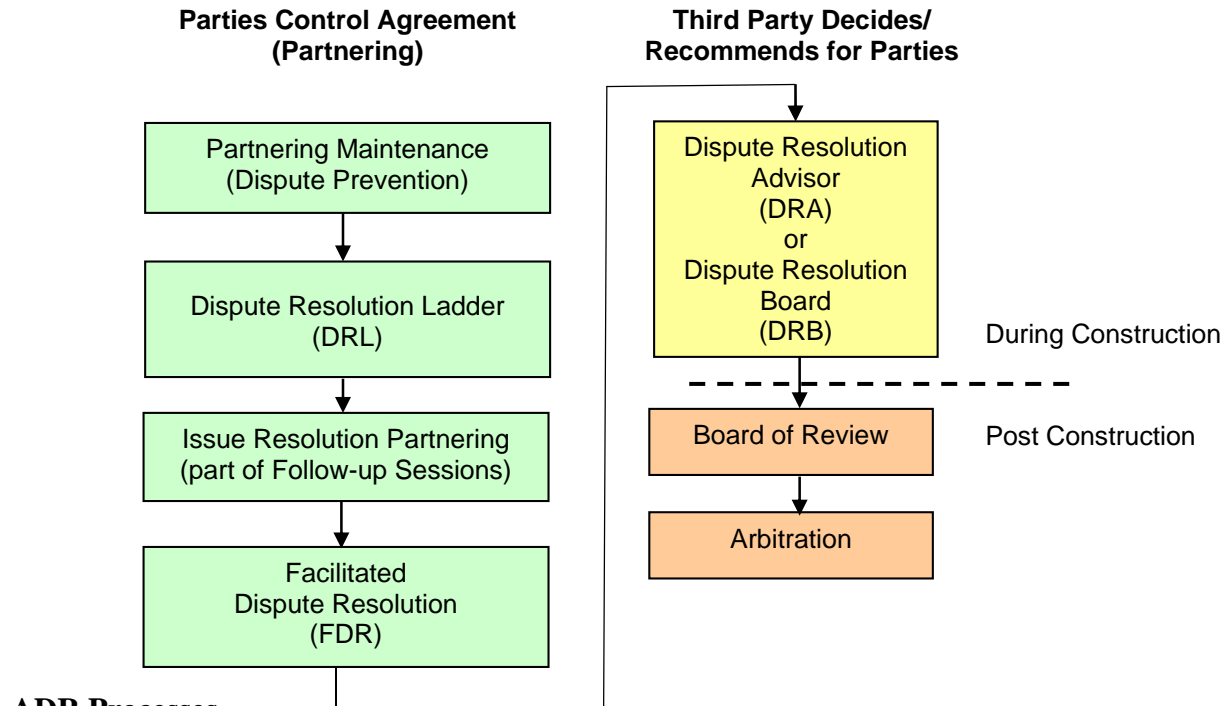


Caltrans Alternative Dispute Resolution

ADR is a growing wave within the construction industry. Frustrated with litigation, owners and contractors are looking for new ways to prevent and resolve project disputes. When looking at ADR there is a hierarchy. Starting with less formal processes such as partnering, the dispute moves to more formal ADR processes such as arbitration until it is resolved. This multi-tiered approach has proven very successful for many owners and contractors.



ADR Processes

Partnering Dispute Resolution Ladder (DRL)	In your partnering session, you developed a dispute resolution ladder as part of your dispute resolution plan as stated in Chapter 7. It is a very important tool for resolving project disputes.
Follow-up Partnering	A follow-up partnering session is used for dispute prevention and team cooperation, but it also may be an excellent forum for issue resolution partnering. This “course correction” can be instrumental in turning around a project that is not going well. The process also reinforces the concepts of partnering and asks the project team to recommit to the process. After all, even after the dispute is resolved you all still have to work together.
Facilitated Dispute Resolution (FDR) See appendix F	The FDR is an extension of the partnering process, bringing together all stakeholders with a trained, neutral facilitator. The session is held in an informal setting with each side presenting their “story,” facts, and supporting information. With the help of the facilitator, disputes are broken down into parts, and each part is resolved on its merits. The process itself creates a deadline for resolution.
Continued Advisor (DRA)	, even useful in the resolution of minor disputes. Here one expert advisor hears both sides and gives a written opinion (non-binding).

Dispute Resolution Board (DRB)	The DRB has been established as an advisory body that makes recommendations in order to resolve disputes between the state and contractor. The DRB consists of three neutral members. One member is selected by the contractor, one by Caltrans, and the third by the first two board members. The members are usually individuals who have been in the industry for many years and can offer sound technical advice and reasoned findings.
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Issue Resolution Partnering

One goal of the Caltrans Partnering Program is to have the project teams resolve their own issues. Really, who better than the team can resolve the project issues? Many times as the project progresses you run into issues that are hard to resolve. For these issues, you may use your quarterly partnering session for issue resolution partnering. This may take part of or the entire “day of partnering” depending on the complexity of the dispute.

For issue resolution sessions, your facilitator will need to understand the nature of the issue and dispute so that he/she can design an appropriate session. Both the contractor and Caltrans should come prepared to share their story. It is important to bring adequate background information for each issue, so it can be used to help everyone understand the situation and find a resolution.

If this process is not successful, you can continue to elevate the dispute up the resolution ladder.

Facilitated Dispute Resolution

At your kick-off partnering workshop, you will decide if you wish to use the FDR process on your project. If so, you will also need to decide if you would like the use of additional days (up to 20) to plan and hold the session prior to referring the dispute to the DRB. In order to implement the option of additional referral days, its intended use must be agreed upon by the team and documented in the dispute resolution plan of the partnering charter.

While more formal than an issue resolution partnering, FDR is an extension of the partnering process, bringing together involved project stakeholders to work toward agreement on outstanding disputes. This process has proven to be highly effective in helping the team resolve complex issues. The FDR session is a forum for the decision makers to find out the facts surrounding the issues and to resolve the disputes for each issue based on its merits. It is not appropriate for DRB or DRA members to be present at these types of sessions.

Session Preparation

Thorough preparation is critical for a productive session. You will be asked to email or fax the facilitator a list of the outstanding issues and where you are in the dispute(s) that you (and the other party) would like to resolve. The facilitator will then prioritize the issues (with the concurrence of both parties) and develop an agenda for the FDR session. This allows both sides to know for which issues to prepare. It cannot be emphasized strongly enough how important your presentation of each issue is to the decision makers’ being able to reach resolution.

Preparation should include:

- Identification of the problem (read the potential claim; state where the disagreement lies)
- Chronology of events (contractor’s and Caltrans’ versions)

- Relevant specifications, plans, and documentation (letters, journal entries)
- Discussion of the problem (Caltrans' and contractor's versions)
- Discussion of how the project was built (in regard to the issue)

Your presentation should be prepared and complete. It should present your version of the facts, each supported by documentation and relevant exhibits. Presentation boards, pictures, highlighted copies of documents, etc. will help you make your case. Remember, each side must be able to “justify” any agreement that is reached. For example, Caltrans must agree to the reasoning behind the amount being requested; the contractor cannot just throw out numbers. The logic behind the numbers and how they were arrived at must be presented. This allows the decision makers for Caltrans and the contractor to substantiate the agreements reached on the issues and then to gain final approval. It is the RE’s and PM’s job to present the facts as they see them. It is the decision makers’ job to look at the facts and to find a justifiable resolution.

For more information on facilitated dispute resolution, see Appendix F.

Red Flags/Triggers for When to Implement ADR

There are certain “red flags” that should be monitored. When one occurs, it is a signal for the use of your ADR processes. Here are a few flags to look for:

- Positioning letters being written without prior discussion
- Key stakeholders not attending weekly meetings
- A pattern of conflict or miscommunication
- Excessive notices of potential claim
- A downward trend on the partnering evaluation survey

The Caltrans Dispute Resolution System

All of these ADR processes are a part of the Caltrans dispute resolution system (see graphic below). Your partnering sessions work to prevent disputes. Partnering also sets up your dispute resolution plan, which includes a DRL, FDR, and DRB or DRA.

