



Mediation in the construction industry: cutting the cost of conflict

Andy Grossman, Director, CEDR

Global climate for disputes

- Fragmentation and increased mobility of workforce
- Skills gaps and shortages
- Complex funding arrangements and lengthy procurement process on certain projects
- Current economy:
 - insolvencies and restructuring
 - threat to collaborative working and partnering
 - greater reliance by governments on private sector funding for infrastructure projects
 - claims and litigation likely to increase.

People issues

- High numbers of project participants
- Acceptance of/not challenging unrealistic performance criteria
- Different problem resolution philosophies
- Inequality amongst project team members in ability to deal with problems
- Adversarial behaviours and turning the contract into an arena for combat.

Cost of conflict

- Lost productivity
- Damaged relationships
- Job stress and emotional cost
- Damage to reputation
- Distraction costs
- Impact on corporate value
- Dispute “hangover”.

Why mediation works

Mediation is a flexible process, conducted confidentially in which a skilled impartial person actively assists parties to work towards a negotiated agreement of a problem or dispute, with the parties in control of the decision to settle and the terms of the resolution

- Speed/economy
- “Day in court”
- Commercial and people issues as well as legal
- A safe environment to take an objective look at the risks
- Wider possibility of outcomes
- More sustainable relationships, particularly in long-term contracts
- Finality.



Mediation as part of the dispute prevention landscape

- Partnering
- Contracts promoting principles of collaborative working
- Non-escalation mechanisms:
 - dispute boards
 - project or contracted mediation