



IRMI[®]

Workshop F

***THE WHAT, WHEN, WHY, AND HOW OF
ARBITRATION***

Presented by

**Joseph F. Spitzzeri
Shareholder
Johnson & Bell, Ltd.**

Tuesday, November 9, 1:30–3:00 p.m. and 3:30–5:00 p.m.



*If you are involved
in construction
financial
management...*

COME TO THE

SOURCE

- Learn from your peers
- Keep up with industry changes & trends

CONSTRUCTION FINANCIAL MANAGEMENT ASSOCIATION

The Source & Resource for Construction Financial Professionals

PHONE: 609.452.8000 • www.cfma.org

Joseph F. Spitzzeri
Shareholder
Johnson & Bell, Ltd.

Mr. Spitzzeri is presenting Workshop F, "The What, When, Why, and How of Arbitration," on Tuesday afternoon. Since entering private practice in 1987, he has had a varied litigation practice that is currently concentrated in construction, municipal, products liability, transportation, and civil rights litigation. He has tried cases in the circuit courts of Cook, DuPage, and Kane counties. He has also handled appeals before the Illinois Appellate Court for the First and Second Districts, the Illinois Supreme Court, and the United States Court of Appeals for the Seventh Circuit.

Two different Illinois Attorneys General have appointed Mr. Spitzzeri as a Special Assistant Attorney General to represent state employees and departments such as the Illinois Department of Transportation and the Illinois Department of Mental Health and Developmental Disabilities. Mr. Spitzzeri worked as an Illinois Assistant Attorney General from 1983 to 1987 where he tried numerous cases in the circuit courts of Cook, DuPage, Kane, Livingston, and Sangamon counties. He also tried cases in the United States District Court for the Northern and Central Districts of Illinois, including two class actions. He is certified to serve as a chairperson for the Circuit Court of Cook County Court Annexed Mandatory Arbitration Program.

His Bar admissions include the U.S. District Court, Northern District of Illinois, 1983; Federal Trial Bar, 1983; U.S. Court of Appeals, Seventh Circuit, 1984; and U.S. Supreme Court, 1987. Mr. Spitzzeri is a member of the American Bar Association, the Illinois State Bar Association, the Cook County Bar Association, the Kane County Bar Association, the Illinois Association of Defense Trial Counsel, the Kane County Justinian Society of Lawyers, the Trial Lawyers Club of Chicago, and The Construction Management Association of America. He is also a member of the Builders Association of Greater Chicago and the Construction Management Association of America. He served as president of the Kane County Justinian Society of Lawyers and is a member of the board of directors of the Trial Lawyers Club of Chicago. He was also chairman of the 34th Annual Defense Tactics Seminar for the Illinois Association of Defense Trial Counsel.

Frequent lecturing on construction, product liability, and civil practice issues are part of Mr. Spitzzeri's practice. He also conducts on-site seminars for his construction and insurance clients. Mr. Spitzzeri has published articles for the Illinois Association of Defense Trial Counsel, the *DuPage County Bar Journal*, and the Illinois Institute for Continuing Legal Education. His article published in the *DuPage County Bar Journal* titled, "Contribution and the Workers' Compensation Act: Promoting a Harmonious Balance," espoused the position ultimately adopted by the Illinois Supreme Court in *Kotecki v Cyclops Welding Corporation* limiting an employer's contribution liability to its workers compensation liability.

He graduated from John Marshall Law School in 1983 and the University of Illinois in 1981.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

THE WHAT, WHEN, WHY, AND HOW OF ARBITRATION

**Joseph F. Spitzzeri
Johnson & Bell, Ltd.**

TABLE OF CONTENTS

	PAGE
Introduction.....	6
Mediation	6
Arbitration	6
National Roster of Neutrals	6
Glossary of Dispute Resolution Terms	6
How Does Mediation Differ from Arbitration	7
Stages of Mediation	7
Stages of Arbitration	9
Procedure for Oral Hearings	14
Procedures for Large, Complex Disputes	15
Optional Rules for Emergency Measures of Protection	15
International Cases.....	16
Arbitration Regular Track Procedures	16
ADR Clauses	17
Construction Industry Arbitration Rules	19
Procedures for Large, Complex Construction Disputes.....	24
Document Discovery in Construction Litigation	26
Administrative Fees	26
Appendix Forms	27

Introduction

In the normal course of day-to-day business affairs, disputes are often inevitable. This can lead to delay shipments, complaints about the quality of construction, claims of nonperformance, and similar misunderstandings. The resolution of such disputes, however, need not be costly and acrimonious. Alternative means of dispute resolution can save time and money, and can help to put the dispute behind you while preserving a valuable business relationship.

Mediation

Mediation is a meeting among disputants, their representatives, and a mediator to discuss settlement. The mediator's role is to help the disputants explore issues, needs, and settlement options, but resolution of the dispute rests with the disputants themselves. A mediation conference can be scheduled very quickly and requires a relatively small amount of preparation time. The conference usually begins with a joint discussion of the case, followed by the mediator working with the disputants both together and separately, if appropriate, to resolve the case. Many cases are resolved within a few hours.

Arbitration

Arbitration is the referral of a dispute to one or more impartial persons for final and binding determination. Private and confidential, it is designed for quick, practical and economical settlements. Parties can exercise additional control over the arbitration process by adding specific provisions to their contracts' arbitration clauses. Stipulations may be made regarding confidentiality of proprietary information used; evidence, locale, number of arbitrators; and issues subject to arbitration, for example.

Prior to the initial hearing in a case, an administrative conference with the parties or a preliminary hearing with the arbitrators (s) and the parties may be scheduled to arrange for such matters as the production of relevant documents and the identification of witnesses, and for discussion of and agreement by the parties to any desired rule modifications.

The National Roster of Neutrals

The AAA maintains a national roster of approximately 8,000 trained experts throughout the United States and the rest of the world.

The AAA requires that applicants have a minimum of ten years of senior level business or professional expertise or legal practice prior to being considered for the roster.

Glossary of Dispute Resolution Terms

Arbitration is submission of a dispute to one or more impartial persons for a final and binding decision.

Awards are the decision of arbitrators.

Case managers are the AAA staff persons assigned to administer cases.

Caucuses are meetings in which a mediator talks with the parties individually to discuss the issues.

Demands for Arbitration are unilateral filings of claims in arbitration, based on a contractual or statutory right.

Mediation is a process in which a neutral assists the parties in reaching their own settlement but does not have the authority to make a binding decision.

Submission is the filing of a dispute to a dispute resolution process by all parties after it arises.

How Does Mediation Differ from Arbitration

Arbitration is less formal than litigation, and mediation is even less formal than arbitration. Unlike an arbitrator, a mediator does not have the power to render a binding decision. A mediator does not hold evidentiary hearings as would an arbitrator but instead conducts informal joint and separate meetings with the parties to understand the issues, facts, and positions of the parties. In contrast, arbitrators hear testimony and receive evidence in a joint hearing, on which they render a final and binding decision known as an award.

Any type of civil dispute can be resolved by mediation.

The benefits of successfully mediating a dispute to settlement vary, depending on the needs and interests of the parties. The most common advantages are that:

- parties are directly engaged in the negotiation of the settlement;
- the mediator, as a neutral third party, can view the dispute objectively and can assist the parties in exploring alternatives which they might not have considered on their own;
- as mediation can be scheduled at an early stage in the dispute, a settlement can be reached much more quickly than in litigation;
- parties generally save money through reduced legal costs and less staff time;
- parties enhance the likelihood of continuing their business relationship; and
- creative solutions or accommodations to special needs of the parties can become a part of the settlement.

Stages of a Mediation

I. The Agreement to Mediate

As mediation is a voluntary process, the parties must agree in writing that their dispute will be conducted under the applicable mediation rules of the AAA.

Request for Mediation

The parties can provide for the resolution of future disputes by including a mediation clause in their contract. A typical mediation clause reads as follow:

If a dispute arises out of or relates to this contract or breach thereof and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

The clause may also provide for the qualifications of the mediator, the method of payment, the locale of meeting, and any other item of concern to the parties.

Submission to Mediation

Where the parties did not provide in advance for mediation, they may submit an existing dispute to mediation through the filing of a submission form that has been duly executed by the parties or their authorized representatives. A sample form is enclosed in the Appendix. The parties will be provided with a biographical sketch of the mediator. The parties are instructed to review the sketch closely and advise the Association of any objections they may have to the appointment.

II. Preparation for the Mediation Session

To prepare for mediation:

1. Define and analyze the issues involved in the dispute.
2. Recognize the parameters of the given situation (what you can realistically expect, time constraints, available resources, legal ramifications, business or trade practices, costs, etc.).
3. Identify your needs and interests in settling the dispute.
4. Prioritize the issues in light of your needs.
5. Determine courses of action, positions, and tradeoffs and explore variety of possible solutions.
6. Seek to make your proposals reasonable and legitimate and be willing to accommodate needs of the other party.
7. Ascertain the strengths and weakness of your case.
8. Ready facts, documents, and sound reasoning to support your claims.
9. Anticipate the other party's needs, demands, and strengths and weaknesses, positions, and version of facts.
10. Focus on the interests, not the position, of each party.
11. Develop your strategies and tactics through discussion of issues, presentation of proposals and testing of the other party's positions.

III. The Mediation Conference

The parties should come to the mediation conference prepared with all of the evidence and documentation they feel will be necessary to discuss their respective cases. Parties are, of course, entitled to representation by counsel.

At the outset, mediators describe procedures and ground rules covering each party's opportunity to talk, order of presentation, decorum, discussion of unresolved issues, use of caucuses, and confidentiality of proceedings.

After these preliminaries, each party describes their respective views of the dispute.

When joint discussions have reached a stage where no further progress is being made, the mediator often meets with each party in caucuses.

During the final caucuses and joint sessions, the mediator narrows the difference between the parties and obtains agreement on major and minor issues. The mediator reduces a disagreement into a workable solution.

When the parties reach an agreement, they should reduce the terms to writing and exchange releases.

If the mediation fails to reach a settlement of any or all of the issues, the parties may submit to binding arbitration.

Administrative Fees

The nonrefundable case set-up fee is payable by the parties. In addition, the parties are responsible for compensating the mediator at his or her published rate, for conference and study time (hourly or per diem).

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before commencement of the mediation, the AAA shall estimate anticipated total expenses. Each party shall pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.

CONFIDENTIALITY

Each party is generally required to execute a confidentiality clause that negotiations shall remain confidential and are not admissible at a subsequent trial.

Stages of an Arbitration

I. The Agreement to Arbitrate

The most important step in initiating arbitration is the agreement to arbitrate. The agreement can be of one of two kinds: it can take the form of a future-dispute arbitration clause in a contract, or, where the parties did not provide in advance for arbitration, it can take the form of a submission of an existing dispute to arbitration.

The parties can provide for the arbitration of future disputes by inserting the following clause into their contracts.

Standard Arbitration Clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator (s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be submitted by the use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules the following controversy: (cite briefly). We further agree that the above controversy may be submitted to (one) (three) arbitrator (s). We further agree that we will faithfully observe this agreement and rules, that we will abide by and perform any award rendered by the arbitrator (s), and that a judgment of the court having jurisdiction may be entered on the award.

Filing of a claim with the AAA along with the appropriate filing fee, and serving the defending party, are all that is required to set the machinery for arbitration in motion. Upon receiving the initiating papers together with the filing fee, the AAA assigns the case to one of its staff members, whose official title is case manager and who, from that point onward, is at the disposal of the parties, expediting administration and assisting both sides in all procedural matters until the award is rendered.

Special attention is sometimes required to determine in which state and city hearings are to take place. If the place of arbitration has not been designated in the contract or Submission to Dispute Resolution, or if the parties have not otherwise notified the AAA of their agreement on locale, the AAA will designate the city in accordance with its rules. Among the factors considered are:

- locations of the parties;
- locations of witnesses and documents;
- the location of sites or the place of materials;
- relative costs to the parties;
- the place of performance of the contract;
- laws applicable to the contract;
- places of previous court actions, if any;
- the location of the most appropriate panel of arbitrators; and
- any other reasonable arguments that might affect the local determination.

Hearings may be held in any geographical area, not just where the AAA maintains regional offices, unless prohibited by state statute such as below:

A provision contained in or executed in connection with a building and construction contract to be performed in Illinois that makes the contract subject to the laws of another state or that requires litigation, arbitration, or dispute resolution to take place in another state is against public policy. Such a provision is void and unenforceable.

Contracts of the United States or any other state. This Act shall not apply to provisions contained in or executed in connection with any building and construction contract awarded by the United States or by any other state.

Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs. Those procedures provide for notice of arbitrator appointment and notice of hearing by telephone and for the award of the arbitrator to be rendered no later than 14 days from the date of closing of the hearing.

A Checklist for Initiating Arbitration

	By Demand for Arbitration	By Submission to Arbitrator
Original Document	Mail to respondent.	File with the AAA in duplicate.
Copies Needed by the AAA	Two.	Two.
Copies Retained by the Parties	The demanding party retains one.	Each party retains one.
Signatures Required	An authorized person for the demanding party signs and lists his or her title.	Authorized person for both parties sign, listing their title.
Identification of Parties	The respondent should be clearly identified by official names and address.	Official names and addresses of both parties should appear, with signatures and titles.
Contract Clauses	Arbitration clauses should be quoted in full (may be attached separately if more convenient). Include date of the document.	Not applicable.
The Filing Fee	A nonrefundable filing fee must be advanced by the demanding party. The arbitrator later apportions the fee.	The fee may be shared equally. The arbitrator later apportions the fee.
The Statement of Dispute	It should be brief but clear and include the amount claimed, if any, and the relief sought.	Claims and answers should be brief but clear and include the amount claimed, if any, and the relief sought.
Answering Statements	The respondent may mail the answering statement to the claimant and file two copies with the AAA. If a counterclaim is asserted, a filing fee must be paid.	See the proceeding.
Composition of the Arbitration Panel	The AAA will determine the number of arbitrators unless composition is stated in the arbitration clause.	The number of arbitrators desired may be stated at the time of filing. If not stated, the AAA will determine the composition of the panel.
Locale Arbitration	If not provided for in the arbitration clause, the demanding party should indicate its preference.	Locale should be indicated, if possible

II. Selection of the Arbitrator

The American Arbitration Association now maintains a National Roster of Neutrals of approximately 8,000 individuals through the United States and the rest of the world.

Unless the parties have indicated another method, the AAA uses the following simple and effective system for selecting the arbitrator:

1. After the filing of the submission or the answering statement, or upon the expiration of the time within which the answering statement is to be filed, the AAA sends each party a list of potential arbitrators.
2. Parties are allowed 15 days to study the list, strike names to which they object, and number the remaining names in the order of preference. If administration is under the Expedited Procedures, the parties are allowed seven days to study the list of five proposed arbitrators, strike two names, and number the remaining names in order of preference.
3. When these lists are returned to the AAA, the case manager compares indicated preferences and makes note of the mutual choices.
4. If the parties cannot agree on an arbitrator, the AAA will make an administrative appointment, but in no case will an arbitrator whose name was crossed out by either party be appointed.

Panels with Party-Appointed Arbitrators

Under some arbitration clauses in use, each party to a dispute appoints one arbitrator and the two select a third arbitrator from the AAA's panels in accordance with procedures just described in steps 2-4.

III. Preparation for the Hearing

The case manager consults all parties and arbitrators to determine a mutually convenient day and time for the hearing. If the parties cannot agree, the arbitrator is empowered to set dates.

In most cases, a preliminary hearing with the parties and/or their representative and the arbitrator will be scheduled by the arbitrator to specify the issues to be resolved, to stipulate uncontested facts, and to consider other matters that will expedite the arbitration proceedings. The arbitrator may at the preliminary hearing, establish (i) the extent of and a schedule for the production of relevant documents and other information, (ii) the identification of all witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. For purposes of arbitrator compensation, the preliminary hearing will be considered as the first day of service.

Occasionally, a party needs to postpone a scheduled hearing. When this is necessary, the party seeking postponement should first contact the other party to obtain its consent, as well as alternate hearing dates, before contacting the AAA. If the other party does not consent to the postponement, the AAA should be so advised. The case manager will in turn, coordinate having the arbitrator decide whether the hearing should be postponed, as the rules provide. In no event should the parties contact the arbitrator directly.

Since the arbitrator will make the award on the basis of facts and exhibits presented at the hearing, it is essential that the parties or their representatives prepare for arbitration carefully.

1. Assemble all documents and papers that you will need at the hearing. Always make photocopies for the arbitrator and the other party and prepare an exhibit binder. If docu-

ments that are needed are in the possession of the other party, ask that they be brought to the arbitration. Under some state arbitration laws, the arbitrator or another person had authority to subpoena documents and witnesses. A checklist of documents and exhibits will be helpful toward your orderly presentation.

2. If it will be necessary for the arbitrator to visit a building site or warehouse for an on-the-spot investigation, make plans in advance. The arbitrator will have to be accompanied by representatives of both parties, unless they specifically authorize that the investigation be conducted without their presence unless one party fails to attend after being notified.
3. Interview all of your witnesses. Make certain that each one understands the whole case and particularly the importance of his or her own testimony within it.
4. If there is a possibility that others, not on your regular list of witnesses, might have to appear, alert them to be available on call without delay.
5. Make a written summary of what each witness will prove. This will be useful as a checklist at the hearing and will help you make sure that nothing is overlooked.
6. Study the case from the other side's point of view. Be prepared to answer the opposition's evidence.

The right to representation in arbitration by counsel or another authorized person is guaranteed by the rules of the American Arbitration Association.

IV. Presentation of the Case

Arbitration hearings are conducted somewhat like court trials, except that arbitrators are less formal. Arbitrators are therefore inclined to accept evidence that might not be allowed by judges.

Direct testimony of witnesses is usually more persuasive than hearsay evidence, and facts will be better established by documents and exhibits than by argument only.

It is customary for the claimant to proceed first with its case, followed by the respondent. This order may be varied, however, when the arbitrator thinks it necessary. In any event, the "burden of proof" is not on one side more than the other; each party must try to convince the arbitrator of the correctness of its position and no hearing is closed until both have had a full opportunity to do so. That is why it is equally the responsibility of the claimant and the respondent to present their case to the arbitrator in an orderly and logical manner. This includes:

1. An opening statement that clearly but briefly describes the controversy and indicates what is to be proved.
2. A discussion of the remedy sought.
3. Introduction of witnesses in a systematic order to clarify the nature of the controversy and to identify documents and exhibits.
4. A closing statement that should include a summary of the evidence and arguments and a refutation of points made by the opposition.
5. If there are multiple disputes, recommend the arbitrator hear evidence on each dispute before moving to the next dispute.

After both sides have had an equal opportunity to present all of their evidence, the arbitrator declares a hearing closed. The arbitrator has 30 days from that time within which to render an award, unless the agreement provides otherwise. If the case was administered under the Expedited Procedures in the rules, the arbitrator has 14 days within which to render an award.

The Award

The award is the decision of the arbitrator on the matters submitted to him or her under the arbitration agreement. The purpose of the award is to dispose of the controversy finally and conclusively. Arbitrators are not required to write opinions explaining the reasons for their decisions.

The power of the arbitrator ends with the making of the award. An award may not be changed by the arbitrator, once it is made, unless the parties agree to restore the power of the arbitrator or unless the law provides otherwise.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Procedure for Oral Hearings

WHO MAKES			
	Who Decides	Arrangements	Notice
Time	The arbitrator, at the convenience of the parties.	The case manager, who consults the parties and the arbitrator.	At least ten days, given by the case manager unless parties agree otherwise.
Representation by Counsel	The individual party.	The individual party.	Three days notice to other party unless arbitration was initiated by counsel, in which case notice is deemed to have been given.
Stenographic Records and Interpreters	The requesting party.	The requesting party.	The requesting party notified the other part in advance of the hearing and may inquire of the other side as to whether it would like to share the costs and get a copy of the record.
Attendance at Hearing	Parties attend and bring witnesses. Arbitrators decide which other interested persons may attend and may require withdrawal of witnesses during the testimony of others.	Parties arrange for attendance of witnesses.	Parties notify their own interested person.
<i>continued</i>			

WHO MAKES			
	Who Decides	Arrangements	Notice
Affidavits and Documents	The arbitrator decides whether to receive such evidence when it is presented.	Each party arranges to submit its own documents. If they are in the possession of the other party, documents may be request directly.	Arbitrator will set a deadline for exchange of documents and affidavits.
Subpoenas of Witnesses and Documents	The arbitrator issues subpoenas on showing of need by a party.	The case manager obtains signature of arbitrator for subpoena supplied by party and returns subpoena to party for service.	Subpoenas are served by parties directly on the witness or custodian of documents.
Inspection or Investigation	The arbitrator may decide on his or her own initiative or at the request of a party, if the arbitrator deems it necessary.	The case manager.	Parties are notified of time and place of inspection so that they can be present.
Closing of Oral Hearings	The arbitrator closes the hearing after both sides complete proofs and witnesses. If briefs, investigations, or more data are required, the hearings are kept open	The case manager arranges for receipt of post-hearing matters and makes a record of the closing hearings on instructions from the arbitrator.	The case manager notifies parties of all official closing dates.

Procedures for Large, Complex Disputes

The procedures provide for an early administrative conference with the AAA and preliminary hearing with the arbitrators, both conducted via telephone conference call. Documentary exchanges and other essential exchanges of information are facilitated, as is preparation of a statement of reason accompanying the award. The procedures apply when the disclosed claim of any party is at least \$500,000.

Optional Rules for Emergency Measures of Protection

The contracting parties must have agreed to use them whether by special agreement or in their arbitration clause. A party seeking such relief prior to the constitution of the panel must notify the AAA and all other parties in writing of the nature of relief sought, the reason why such relief is required, and why the party is entitled to such relief on an emergency bases. Within one business day of receipt of the notice, the AAA will appoint a single emergency arbitrator to rule on emergency application from a special AAA panel of emergency arbitrators designated for that purpose. Of course, the appointment of the emergency arbitrator will be subject to a disclosure and challenge procedure similar to that in the standard commercial rules.

The rules provide an expedited time within which the arbitrator shall establish a schedule for consideration of the application for relief, and shall accordingly review the request. If the arbitrator determines that the party is entitled to the relief, he or she may enter an interim award granting the relief and stating the reasons thereof. Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until such time as the panel is constituted. The emergency arbitrator shall have no further power to act after the panel is constituted, unless the parties agree that the emergency arbitrator is named as a member of the panel. The procedures contain a provision on modification of the interim award and apportionment of costs.

International Cases

The International Centre for Dispute Resolution (ICDR) handles all international matters, including the administration of international mediation and arbitration cases. The international administrative system is set apart from the AAA's domestic administrative services.

An international case is generally defined as having either the place of arbitration or performance of the agreement outside the United States, or having an arbitration agreement between parties from different countries. ICDR administration is designed for parties that have differing languages, legal systems and cultural backgrounds. The ICDR maintains specialized administrative facilities supervised by multilingual attorneys in New York, a European office in Dublin and a worldwide panel of more than 400 arbitrators and mediators.

The International Dispute Resolution Procedures of the ICDR are the most frequently used rules, which were specifically drafted to meet the expectations of international business. Among the more interesting features of the rules are provisions that support party control of the process and provide for independent and impartial arbitrators, expedited proceeding and reasoned decisions.

Arbitration

Regular Track Procedures:

The rules contain Regular Track Procedures which are applied to the administration of all arbitration cases, unless they conflict with any portion of the Fast Track Procedures or the Procedures for Large, Complex Construction Disputes whenever these apply.

The highlights of the Regular Track Procedures are:

- party input into the AAA's preparation of lists of proposed arbitrators;
- express arbitrator authority to control the discovery process;
- broad arbitrator authority to control the hearing;
- a concise written breakdown of the award and, if requested in writing by all parties prior to the appointment of the arbitrator or at the discretion of the arbitrator, a written explanation of the award;
- arbitrator compensation, with the AAA to provide the arbitrator's compensation policy v. the biographical information sent to the parties;
- a demand form and an answer form, both which seek more information from the parties to assist the AAA in better serving the parties.

Fast Track Procedures:

The Fast Track Procedures were designed for cases involving claims of no more than \$75,000. The highlights of this system are:

- a 60-day “time standard” for case completion;
- establishment of a special pool of arbitrators who are pre-qualified to serve on an expedited basis;
- an expedited arbitrator appointment process, with party input;
- presumption that cases involving \$10,000 or less will be decided on a documents only basis;
- requirement of a hearing within 30 calendar days of the arbitrator’s appointment;
- a single day of hearing in most cases;
- an award in no more than 14 calendar days after completion of the hearing.

Procedures for Large, Complex Construction Disputes:

Unless the parties agree otherwise, the Procedures for Large, Complex Construction Disputes will be applied to all cases administered by the AAA under the Construction Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs.

The key features of these procedures include:

- mandatory use of the procedures in cases involving claims of \$500,000 or more;
- a highly qualified, trained Panel of Neutrals, compensated at their customary rates;
- a mandatory preliminary hearing with arbitrators, which may be conducted by telephone;
- broad arbitrator authority to order and control discovery, including deposition;
- presumption that hearings will proceed on a consecutive or block basis.

ADR Clauses

Mediation

If the parties elect to adopt mediation as a part of their contractual dispute settlement procedure, they can insert one of the following mediation clause into their contract in conjunction with a standard arbitration provision.

- A. *If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.*

- B. *If a dispute arises out of or relates to this Agreement, the parties shall endeavor to settle the dispute first through direct discussion. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association before recourse to litigation. Once the party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days of filing of the request.*

If the parties choose to use a mediator to resolve an existing dispute, they can enter into the following submission.

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures. (The clause may also provide for qualifications of the mediator (s), method of payment, locale of meetings, and any other item of concern to the parties.)

If the parties elect to adopt mediation as a part of their contractual dispute settlement procedure, they can insert one of the following mediation clause into their contract in conjunction with a standard arbitration provision.

Arbitration

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator (s) may be entered in any court having jurisdiction thereof.

Except as to any matter which has been waived by or conclusively determined pursuant to other terms of the Contract Documents, all claims, disputes and other matters in question arising out of, or relating to, this Purchase Order, or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. At the demand of either party hereto, any such arbitration will be consolidated with related proceedings involving Buyer, Engineer, or other contractors unless prohibited by the terms of or parties to said other proceedings. The foregoing agreement to arbitrate shall be specifically enforceable under the controlling arbitration law. The award rendered by the arbitrators shall be final, and the judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

If the parties choose to use an arbitrate to resolve an existing dispute, they can enter in to the following submission:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules the following controversy: (city briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator (s). We further agree that we will faithfully observe this agreement and the rules that we will abide by and perform any award rendered by the arbitrator (s), and that a judgment of the court having jurisdiction may be entered on the award.

When Not to Arbitrate:

A potential problem is multi-party litigation when all parties are not compelled to participate in one unified arbitration proceeding. One party may not wish to arbitrate with the other on the one hand and with the subcontractors in a separate proceeding for indemnity on the other. Because

the only other forum for a unified proceeding may be litigating in court, it may make better sense not to compel arbitration, especially where the main defendant is an additional insured (AI) on a subcontractor's insurance policy or has an indemnity clause running in its favor. The lack of one unified proceeding might make it difficult for the defendant to receive the AI and indemnity benefits to which it is otherwise entitled.

The dual proceeding problem is also found where not all plaintiffs are direct contracting parties.

Arbitration clauses should be required in all lower tier contracts and the prime contract should include reference to lower tier contracts and arbitration requirements. An agreement to consolidate all related disputes into a single arbitration proceeding is recommended. The following language is recommended in all lower tier contracts where the primary contract has an arbitration clause.

- A. *The subcontractor hereby agrees to submit to arbitration **upon the demand of the contractor**, any contribution, indemnity or breach of contract claims raised by the contractor against the subcontractor arising from claims brought against the contractor by a non-party to this subcontract.*

Construction Industry Arbitration Rules

Regular Track Procedures

Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association under its Construction Industry Arbitration Rules. The parties, by written agreement, may vary the procedures set forth in these rules.

The Fast Track Procedures may also use these procedures in larger cases.

The Procedures for Large, Complex Construction Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000, exclusive of claimed interest, arbitration fees and costs. Parties may also agree to use these procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases.

Initiation under an Arbitration Provision in a Contract

- (a) Arbitration under an arbitration provision in a contract shall be initiated in the following manner.
- i) The initiating party (the "claimant") shall, within the time period, if any, specified in the contract(s), give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the remedy sought, and the hearing locale requested.
 - ii) The claimant shall file at any office of the AAA two copies of the demand and two copies of the arbitration provision of the contract, together with the appropriate filing fee as provided in the schedule included with these rules.
 - iii) The AAA shall confirm notice of such filing to the parties.

- (b) A respondent may file an answering statement in duplicate with the AAA within 15 calendar days after confirmation of notice of filing of the demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the party making the counterclaim shall forward to the AAA with the answering statement the appropriate fee provided in the schedule included with these rules.
- (c) If no answering statement is filed within the stated time, respondent will be deemed to deny the claim. Failure to file and answering statement shall not operate to delay the arbitration
- (d) When filing any statement pursuant to this section, the parties are encouraged to provide description to their claims in sufficient detail to make the circumstances of the dispute clear to the arbitrator

Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these ruled by filing at any office of the AAA two copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the names and addresses of the parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested, together with the appropriate filing fee as provided in the schedule included with these rules. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party.

Change of Claim

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, a copy shall be mailed to the other party, who shall have a period of 10 calendar days from the date of such mailing within which to file an answer with the AAA.

After the arbitrator is appointed no new or different claim or counterclaim may be submitted to the arbitrator except with the arbitrator's consent.

Fixing of Locale

The parties may mutually agree on the locale where the arbitration is held. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within 15 calendar days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale, and its decision shall be final and binding.

Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators in the demand or answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.

Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitration concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to Section R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of the candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.

Exchange of Information

- (a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct
 - i) the production of documents and other information, and
 - ii) the identification of any witnesses to be called.
- (b) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
- (c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.
- (d) There shall be no other discovery, except as indicated herein or as ordered by the arbitrator in extraordinary cases when they demands of justice require it.

Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing and/or conference.

Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine propriety of the attendance of any person other than a party and its representative.

Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if required by law or requested by any party, shall do so.

Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing.

Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

Arbitration in the Absence of a Party or Representative

An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

Scope of Award

- (a) In the final award, the arbitrator shall assess fees, expenses, and compensation. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- (b) The award of the arbitrator may include interest at such rate and from such date as the arbitrator may deem appropriate; and an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

Modification of Award

Within twenty calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

If the modification request is made by a party, the other parties shall be given ten calendar days to respond to the request. The arbitration shall dispose of the request within twenty calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

Fast Track Procedures

Limitation on Extensions

In the absence of extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of the time in which to respond to the demand for arbitration or counterclaim.

Appointment and Qualification of Arbitrator

Immediately after the filing of (a) the submission or (b) the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA will simultaneously submit to each party a listing and biographical information from its panel of arbitrators knowledgeable in construction who are available for serve in Fast Track cases. The parties are encouraged to agree to an arbitrator from this list, and to advise the Association of their agreement, or any factual objection to any of the listed arbitrators, within the seven calendar says of the AAA's transmission of the list.

Preliminary Telephone Conference

Unless otherwise agreed by the parties and the arbitrator, as promptly as practicable after the appointment of the arbitrator, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrator.

Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of exhibits.

Discovery

There shall be no discovery, except as provided in the rules or as ordered by the arbitrator in extraordinary cases when the demands of justice require it.

Proceedings on Documents

Where no party's claim exceeds \$10,000, exclusive of interest and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party request an oral hearing or conference call, or the arbitrator determines that an oral hearing or conference call is necessary. The arbitrator shall establish a fair and equitable procedure for the submission of documents.

Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

The Hearing

- (a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule one additional hearing day within seven business days after the initial day of hearing.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one.

Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than fourteen calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

Time Standards

The arbitration shall be completed by settlement or award within 60 calendar days of confirmation of the arbitrator's appointment, unless all parties and the arbitrator agree otherwise or the arbitrator extends this time in extraordinary cases when the demands of justice require it. The Association will relax these time standards in the event the arbitration is stayed pending mediation.

Procedures for Large, Complex Construction Disputes

Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference call will take place within 14 days after the commencement of the arbitration. In the event the parties are unable to agree on mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) to obtain conflict statements from the parties; and
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

Arbitrators

Large, Complex Construction Cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrator (s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.

Preliminary Hearing

As promptly as practicable after the selection of the arbitrator (s), a preliminary hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator (s). Unless the parties agree otherwise, the preliminary hearing will be conducted by telephone conference call rather than in person.

At the preliminary hearing the matters to be considered shall include, without limitation:

- (a) service of detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator (s);
- (b) stipulations to uncontested facts;
- (c) the extent to which discovery shall be conducted;
- (d) exchange and premarking of those documents which each party believes may be offered at the hearing;

- (e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
- (f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;
- (g) the extent to which hearings will proceed on consecutive days;
- (h) whether a stenographic or other official record of the proceedings shall be maintained;
- (i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution; and
- (j) the procedure for the issuance of subpoenas.

Management of Proceedings

- (a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Construction Cases.
- (b) Parties shall cooperate in exchange of documents, exhibits and information within such party's control if the arbitrator (s) consider such production to be consistent with the goal of achieving a just, speedy and cost effective resolution of a Large, Complex and Construction Case.
- (c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator (s) may place such limitations on the conduct of such discovery as the arbitrator (s) shall deem appropriate. If the parties cannot agree on production of documents and other information, the arbitrator (s), consistent with the expedited nature of arbitration, may establish the extent of the discovery.
- (d) At the discretion of the arbitrator (s), upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator (s) may order depositions of, or the propounding of interrogatories to, such persons who may possess information determined by the arbitrator (s) to be necessary to a determination of the matter.
- (e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 business days prior to the hearing unless the arbitrator (s) determine otherwise.
- (f) The exchange of information pursuant to this rule, as agreed by the parties and/or directed by the arbitrator (s), shall be included within the Scheduling and Procedure Order.
- (g) The arbitrator is authorized to resolve any disputes concerning the exchange of information.
- (h) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Document Discovery in Construction Litigation

Construction disputes often require the attorney to cull through literally thousands of technical documents. These include the design-phase, bid-phase, contract award, and construction-phase documents.

Efficient discovery of construction documentation requires a clear and well-defined plan of action. The first step is to identify all parties involved in the construction plan, their roles and contractual relationships. Once these have been clarified, a session should be held to discuss the relevant issues of dispute, what relationships were breached, how and why. Common types of documents which relate to these issues then should be identified and compiled into a list. Finally, a strategy or systematic approach should be developed for obtaining and reviewing the documents.

Documents necessary include, but are not limited, to:

1. Bid specifications and drawings
2. Bid proposals
3. Purchase orders and other documents reflecting award of the bid
4. Change orders after bid work is awarded
5. Written communications concerning bid work and change orders including email communications
6. Photos/Videos
7. Industry standards to support arguments

Administrative Fees

The AAA prescribes an initial filing fee and a case service fee to compensate for the cost of providing administrative services. The initial filing fee is payable in full by the filing party when a claim, counterclaim, or additional claim is filed. A case service fee will be incurred for all cases that proceed to their first hearing. The administrative fees are based on the amount of the claim or counterclaim. In addition, filing fees are subject to a refund schedule and case service fees are generally refundable at the conclusion of the case if no hearings occur.

Arbitrator compensation is not included in the administrative fee schedule. The parties are responsible for compensating the arbitrator at his or her published rate (hourly or per diem).

ADMINISTRATIVE FEES

The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule.

Fees

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed.

A case service fee will be incurred for all cases that proceed to their first hearing.

Amount of Claim	Initial Filing Fee	Case Service Fee
Above \$0 to \$10,000	\$500	\$200
Above \$10,000 to \$75,000	\$750	\$300
Above \$75,000 to \$150,000	\$1,500	\$750
Above \$150,000 to \$300,000	\$2,750	\$1,250
Above \$300,000 to \$500,000	\$4,250	\$1,750
Above \$500,00 to \$1,000,000	\$6,000	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,000	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,000	\$4,000
Above \$10,000,000	*	*
Nonmonetary Claims**	\$3,250	\$1,250

Refund Schedule

The AAA offers a refund schedule on filing fees. For cases with claims up to \$75,000 a minimum filing fee of \$300 will not be refunded. For all other cases, a minimum fee of \$500 will not be refunded. Subject to the minimums, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn with five calendar days of filing.
- 50% of the filing fee, in any case with filing fees in excess of \$500, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing. Where the filing fee is \$500, the refund will be \$200.

No refund will be made once an arbitrator has been appointment (this includes one arbitrator on a three arbitrator panel). No refunds will be granted on awarded cases.

Appendix Forms

- A. American Arbitration Association Construction Industry Arbitration Rules Submission Forms:
1. Demand for Arbitration located at http://www.adr.org/upload/LIVESITE/Forms/downloadable/form_ci3.pdf
 2. Answering Statement located at http://www.adr.org/upload/LIVESITE/Forms/downloadable/form_ci4.pdf
 3. Request for Mediation located at <http://www.adr.org/upload/LIVESITE/Forms/downloadable/Request%20for%20Mediation.pdf>
 4. Submission to Dispute Resolution located at <http://www.adr.org/upload/LIVESITE/Forms/downloadable/Form%20G1A%20-%20Submission%20to%20Dispute%20Resolution.pdf>
- B. American Arbitration Association Dispute Resolution Services Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes) located at

[http://www.adr.org/
index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures\National_International
\..\..\focusArea\commercial\AAA235current.htm](http://www.adr.org/index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures\National_International\..\..\focusArea\commercial\AAA235current.htm)

- C. Locations of American Arbitration Association offices located at [http://www.adr.org/
index2.1.jsp?JSPssid=15749&JSPsrc=upload\LIVESITE\About\offices\contact%20local.htm](http://www.adr.org/index2.1.jsp?JSPssid=15749&JSPsrc=upload\LIVESITE\About\offices\contact%20local.htm)
- D. American Arbitration Association Rules JLand Procedures [http://www.adr.org/
index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures](http://www.adr.org/index2.1.jsp?JSPssid=15747&JSPsrc=upload\LIVESITE\Rules_Procedures)

**AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION RULES
DEMAND FOR ARBITRATION**

MEDIATION <i>If you want the AAA to contact the other party and attempt to arrange a mediation, please check this box.</i> <input type="checkbox"/>					
TO: Name of Respondent			Name of Representative (if known)		
Address			Representative's Address		
City	State	Zip Code	City	State	Zip Code
Phone No.	Fax No.		Phone No.	Fax No.	
THE NAMED CLAIMANT, A PARTY TO A WRITTEN AGREEMENT PROVIDING FOR ARBITRATION UNDER THE CONSTRUCTION INDUSTRY ARBITRATION RULES, HEREBY DEMANDS ARBITRATION THEREUNDER (ATTACH THE ARBITRATION CLAUSE)					
ARBITRATION CLAUSE CONTAINED IN THE FOLLOWING CONTRACT DOCUMENT: (Please check one)					
<input type="checkbox"/> AIA -American Institute of Architects <input type="checkbox"/> AGC -Associated General Contractors of America <input type="checkbox"/> DBIA -Design Build Institute of America <input type="checkbox"/> EJCDC -Engineers Joint Contract Documents Committee <input type="checkbox"/> ASA -American Subcontractors Association <input type="checkbox"/> CMAA -Construction Management Association of America <input type="checkbox"/> Other (specify _____)					
THE NATURE OF THE DISPUTE (Please give enough details to enable the AAA to select arbitrators with appropriate experience)					
DOLLAR AMOUNT OF CLAIM \$			OTHER RELIEF SOUGHT		
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR (S) TO BE APPOINTED TO HEAR THE DISPUTE					
CLAIMANT IS <input type="checkbox"/> Owner <input type="checkbox"/> Design professional (specify _____) <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor (specify _____) <input type="checkbox"/> Other (specify _____)					
RESPONDENT IS <input type="checkbox"/> Owner <input type="checkbox"/> Design professional (specify _____) <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor (specify _____) <input type="checkbox"/> Other (specify _____)					
Estimated time needed for hearings overall _____ hours _____ days					
Copies of this demand are being filed with the American Arbitration Association at its _____ office. Claimant requests that the AAA commence the administration of the arbitration. Under the rules, you may file an answering statement within fifteen days after notice from the AAA.					
CLAIMANT REQUESTS THAT ARBITRATION HEARINGS BE HELD AT THE FOLLOWING LOCALE					
Signature (may be signed by a representative)			Title		Date
Name of Claimant		Name of Representative		Name of Firm (if Applicable)	
Address (to be used in connection with this case)			Representative's Address		
City	State	Zip Code	City	State	Zip Code
Phone No.	Fax No.		Phone No.	Fax No.	
TO INSTITUTE PROCEEDINGS, PLEASE SEND TWO COPIES OF THIS DEMAND AND THE ARBITRATION AGREEMENT, WITH THE FILING FEE AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL DEMAND TO THE RESPONDENT.					

Form C12-04/04

**AMERICAN ARBITRATION ASSOCIATION
CONSTRUCTION INDUSTRY ARBITRATION RULES
ANSWERING STATEMENT**

MEDIATION *If you want the AAA to contact the other party and attempt to arrange a mediation, please check this box.*

TO: Name of Claimant			Name of Representative (if Known)		
Address			Address		
City	State	Zip Code	City	State	Zip Code
Phone No.	Fax No.		Phone No.	Fax No.	

RESPONDENT ANSWERS CLAIMANT DEMAND FOR ARBITRATION AS FOLLOWS
 Please describe the dispute and any counterclaim in sufficient detail so the AAA may select an arbitrator with appropriate qualifications and experience.
 AAA Case # (if known)

DOLLAR AMOUNT OF CLAIM \$	OTHER RELIEF SOUGHT
------------------------------	---------------------

PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR (S) TO BE APPOINTED TO HEAR THE DISPUTE

ESTIMATED TIME NEEDED FOR HEARINGS OVERALL _____ hours _____ days

RESPONDENT REQUESTS THAT ARBITRATION HEARINGS BE HELD AT THE FOLLOWING LOCALE

Signature (may be signed by a representative)	Title	Date
---	-------	------

Name of Respondent			Name of Representative		
Address			Address		
City	State	Zip Code	City	State	Zip Code
Phone No.	Fax No.		Phone No.	Fax No.	
Email			Email		

PLEASE SEND TWO COPIES OF THIS ANSWERING STATEMENT, WITH THE FILING FEE FOR ANY COUNTERCLAIM, AS PROVIDED FOR IN THE RULES, TO THE AAA. SEND THE ORIGINAL ANSWERING STATEMENT TO THE CLAIMANT.

American Arbitration Association
REQUEST FOR MEDIATION

DATE: _____

To: Name _____

(Of the Party on Whom the demand Is Made)

Address _____

City, State _____ ZIP Code _____

Telephone () _____ Fax () _____

The undersigned party to an agreement contained in a written contract dated _____, providing for mediation under the _____ Mediation Rules of the American Arbitration Association, hereby requests mediation thereunder. (Attach the mediation clause or quote it hereunder)

NATURE OF DISPUTE (Attach additional sheets if necessary.)

THE CLAIM OR RELIEF SOUGHT (the amount, if any):

TYPES OF BUSINESS: Filing Party _____ Respondent Party _____

MEDIATION LOCALE REQUESTED: _____

(City and State)

You are hereby notified that copies of our mediation agreement and of this are being filed with the American Arbitration Association _____ office, with the request that it commence the administration of the mediation.

Signed _____ Title _____

(May be Signed by a Representative)

Name of Filing Party _____

Address _____

City and State _____ ZIP Code _____

Telephone () _____ Fax () _____

Name of Representative _____

Representative's Address _____

City and State _____ ZIP Code _____

Telephone() _____ Fax () _____

To institute proceedings, please send three copies of this request with the administrative fee, as outlined in the appropriate rules, to the AAA. Send the original request to the responding party.

If you have questions regarding which rules apply, please contact the AAA.

Form M2-03/02

American Arbitration Association

SUBMISSION TO DISPUTE RESOLUTION

The named parties hereby submit the following dispute for resolution, under the rules of the American Arbitration Association:

Rules Selected: Commercial Construction
 Other _____

Procedure Selected: Binding Arbitration (describe) Mediation
 Other _____
(describe)

Nature of Dispute (attach additional sheets if necessary):

Amount of Monetary Claim or Nature of Non-Monetary Claim:

Type of Business: Claimant _____ Respondent _____

Place of Hearing _____

We agree that, if arbitration is selected, we will abide by and perform any award rendered hereunder and that a judgment may be entered on the award.

To be completed and signed by all parties
(attach additional sheets if necessary, please remember to obtain signatures)

Name of Party

Address

City, State and Zip Code

(____) _____
Telephone Fax

Name of the Party's Attorney or Representative

Name of Firm (if applicable)

Address

City, State and Zip Code

(____) _____
Telephone Fax

Signed† (may be signed by a representative) Title

Date: _____

Name of Party

Address

City, State and Zip Code

(____) _____
Telephone Fax

Name of the Party's Attorney or Representative

Name of Firm (if applicable)

Address

City, State and Zip Code

(____) _____
Telephone Fax

Signed† (may be signed by a representative) Title

Date: _____

*Please file two signed copies and the non-refundable filing fee with the AAA.
For additional information, please visit our Web site at www.adr.org*

† Signatures of all parties are required.

Form G1A-3/03