

Construction Industry Initial Decision Maker (IDM) Procedures



AMERICAN ARBITRATION ASSOCIATION®

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Construction Industry Initial Decision Maker (IDM) Procedures



Introduction

The typical construction project is complex and lengthy, and given these variables, disputes among parties often occur. In 2007, the AIA Contract Documents® were modified to require that most claims be referred to an Initial Decision Maker (IDM) as a condition precedent to AAA Mediation. However, the Documents allow for the selection of an IDM other than the project architect. As the provider of choice for construction dispute avoidance and resolution services, the American Arbitration Association® (AAA®) has developed an unparalleled roster of professionals to provide a truly independent initial decision for your construction disputes.

The AAA is a not-for-profit, public-service organization offering a broad range of dispute resolution services to businesses, attorneys, individuals, trade associations, unions, management, consumers, for education and training, issues specialized publications, and conducts research on various forms of out-of-court dispute settlement. For more information about the AAA, please visit our website at www.adr.org.

I-1. Agreement of the Parties

Where parties by agreement or in their contract have adopted these procedures, they shall be deemed to have made the IDM Procedures part of their contract and these procedures, as amended and in effect as of the date of filing of a request for an IDM, a part of their agreement.

I-2. IDM Selection

A party may request the AAA to appoint an IDM by filing a request with the AAA and the other parties. To obtain names of prospective IDMs and confirm appointment, either at the time of contracting or at a later date, parties shall submit a request to AAACONSTRUCTION@ADR.ORG. The request should include

contact information of all parties and a brief description of the project. An AAA representative shall contact the parties to facilitate the selection process.

I-3. IDM's Impartiality and Duty to Disclose

- (a) Any person appointed or selected for appointment as an IDM shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the IDM's impartiality or independence, including any bias or any financial or personal interest in the result of the IDM process or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the IDM engagement.
- (b) Upon receipt of disclosure information from the IDM or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the IDM and others. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the IDM, waive such conflicts and proceed with the IDM process. In the event that any party disagrees that the IDM should serve as a result of the disclosure, or at the discretion of the AAA, the IDM shall be replaced.
- (c) In order to encourage disclosure by IDM's, disclosure of information pursuant to this Section I- 3 is not to be construed as an indication that the IDM considers that the disclosed circumstances are likely to affect impartiality or independence.

I-4. Commencing IDM Service

When a party identifies a claim which, pursuant to its contract, is to be referred to an IDM for resolution, the party shall notify the opposing party and the designated IDM, in writing, of the need to initiate IDM services. The notification shall include the names and contact information of the parties and their representatives, if applicable, as well as a brief description of the claim.

I-5. Scope of the IDM's Authority

The IDM appointed pursuant to these procedures shall conduct the IDM process pursuant to the relevant AIA Contract Document[®] or such other document to which the parties have agreed and these procedures. The IDM shall have the power to resolve any disputes with respect to whether a claim is properly submitted to the IDM.

I-6. Scheduling

Through direct communication among the IDM and the parties, the IDM will advise the parties as to submissions required and the dates and times of any conference calls or meetings.

I-7. Decision of the IDM

The IDM shall prepare the initial decision as required by the AIA Contract Document or other agreement of the parties.

I-8. Exclusion of Liability

Neither the AAA nor any IDM in a proceeding under these procedures is a necessary or proper party in judicial proceedings relating to the IDM process. Parties to an IDM process under these procedures shall be deemed to have consented that neither the AAA nor any IDM shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any IDM process under these procedures.

I-9. Cost of the IDM Process

IDM Selection: To initiate the IDM selection process a \$750 fee per party is required.

IDM Service Fee: The cost of the IDM is based on the hourly rate published on the IDM's AAA profile. The IDM Service Fee shall be borne equally by the parties unless they agree otherwise.

Expenses: The expenses of participants for either side shall be paid by the party requesting the attendance of such participants. The expenses of the IDM, including travel and any other reasonable expenses of the IDM, shall be borne equally among the parties, unless the parties agree to an alternate allocation, and shall be paid by the parties upon receipt of the IDM's invoice.

If you have questions about IDM costs or services visit our website at www.adr.org or contact your local AAA office.

Additional Service: The AAA is available to provide additional services including scheduling, billing and other administrative services at an additional cost.

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