

AJCE Activity 2012

JICA's Initiative on Dissemination of Dispute Board

Adjudicator Committee , AJCE

1. Background

The Japan International Cooperation Agency (JICA) has carried out various dissemination activities of the Dispute Board (DB) for projects financed by JICA ODA loan. Since 2008, AJCE has been involved in this program as a member of the JICA Study Team, together with Kyoto University and Nippon Koei Co., Ltd.. The DB is a new dispute resolution mechanism introduced in FIDIC construction contracts in 1999. At present, all of JICA's standard bidding documents (SBD) for construction employ the DB system, as shown below.

JICA SBD and Dispute Board

JICA SBD	Conditions of Contract	Dispute Resolution by:
Works	FIDIC MDB harmonized edition	Standing DB
Plant	ENAA form	Standing DB
Small Works	MDB original	Adjudicator

However, it is observed that application of the DB in actual projects shows very slow progress, and the following bottlenecks have been recognized for its full-scale application:

- 1) Demand-side (or user-side) issue: The real benefit of DB has not been realized by the parties of construction contract. Hence, the establishment of the DB has not yet been positively supported.
- 2) Supply-side issue: The availability of the DB member (or the adjudicator) is insufficient specially in the Asian region in consideration of growing demands.

This paper describes JICA's initiative in the dissemination of DB in the past five years.

2. Countermeasures for Demand-side Issues

1) Dispute Board Promotion Seminar

JICA delivered DB seminars in Indonesia, Vietnam, Sri Lanka, Philippines, Cambodia, Bangladesh, India, and Japan inviting public officers, contractors, and consultants to raise the awareness on the DB. There were 14 seminars held with more than 1,100 participants in total. In the seminars, a lot of questions were asked by the participants and typical questions and

answers (Q&As) are as follows:

Q1: When the country's legal system does not deal with DB, I think the DB's decision does not have a binding effect. What is your comment on this?

A1: The dispute resolution procedure with DB is agreed by contract parties based on the principle of "freedom to contract". We do not think the DB process has any conflict with the national legal system. If a law related to alternative dispute resolution (ADR) is available, it may support DB mechanism; however, it is not a prerequisite for effectiveness of the DB's decision. Furthermore, the successive process, including amicable settlement and arbitration, is stipulated in the FIDIC contract, when either party is dissatisfied with the DB's decision.

Q2: When either party is dissatisfied with the DB's decision, it can proceed with the arbitration. In this case, can the DB cost be regarded as wasted expense?

A2: According to statistics in the United States, only 2% of disputes referred to DB went to arbitration. This means that most of disputes were settled at the project site level and this fact should be well-recognized. Furthermore, a standing DB is able to mitigate the outbreak of the dispute by its dispute prevention function. The dispute may result in the delay of completion of the project entailing huge socioeconomic loss to a nation. The benefits brought by DB can be sufficiently justified by such reasons.

Q3: Can the cost of DB be covered by JICA ODA loans?



DB Promotion Seminar in Vietnam

A3: JICA considers that the DB cost is not a legal cost but a part of project management cost, therefore it is an eligible cost under JICA ODA loans. JICA will discuss the establishment of DB with the executing agency of the JICA ODA project during the project appraisal stage so that the cost allocation for DB will be ensured under the loan for upcoming projects.

2) Dispute Board Manual

JICA issued the user's manual of the DB in 2012. This concise manual has only 60 pages, but covers all the important aspects of a DB. It can be downloaded at the JICA website. The outline of the DB manual is as follows:

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| 1. Introduction |
| 2. Brief Explanation of DB |
| 3. Consideration at Pre-implementation Stage |
| 4. Consideration in Preparation of Tender Documents |
| 5. Selection of DB Members |
| 6. Remuneration of DB Members |
| 7. Site Visit |
| 8. Information to DB during Intervals between Site Visits |
| 9. DB Informal Opinions |
| 10. Referral and DB Decision |
| 11. Amicable Settlement |
| 12. Arbitration |

Outline of DB Manual

3) Mock Dispute Board Seminar

A seminar titled "Mock Dispute Board Seminar" was held in Jakarta in May 2012, which aimed to deepen the understanding on Dispute Board by stakeholders of JICA ODA project by demonstrating mock hearings between DB and employer/contractor/engineer based on typical construction dispute scenarios. About 100 participants attended the seminar.

3. Countermeasures for Supply-side Issue

1) DB Adjudicator Training Kit

JICA developed a training kit for candidates for adjudicator in 2010. The 300-page comprehensive training material was designed to be used in the five-day adjudicator training workshop corresponding to FIDIC's Module 3/3A. Mr. Gordon Jaynes joined the JICA Study Team for the preparation of this kit.

2) Survey on Adjudicator National List

FIDIC has a list of approved adjudicators called the FIDIC President's List of Approved Dispute Adjudicators. At present, 61 adjudicators are registered in the list. To cope with increasing demand for adjudicators, FIDIC encourages its Member Associations (MAs) to establish their own National List of adjudicators. The JICA Study Team visited several MAs who already have lists, namely the VBI of Germany, SIDIR of Poland, and ARIC of Romania, in order to learn how they

established and maintain their national lists. The outcome of this survey was then utilized for the setting up of the Japanese National List by AJCE.

3) Adjudicator Training and Assessment Workshop

In order to verify the usefulness of the DB Adjudicator Training Kit, the Adjudicator Training Workshop (ATW) and Adjudicator Assessment Workshop (AAW) were held in Tokyo in 2010, inviting the candidates for adjudicators. The result of the assessment was delivered to JICA by a three-member assessment panel. This result was further conveyed to AJCE, which established its National List in May 2011 based on it. The AJCE list is the first list of adjudicators in Asia consisting of seven adjudicators at present.



Mock Hearing at AAW



Interview at AAW



AJCE Adjudicator List (at Website)

4. Conclusion

As a result of the continued efforts by JICA, the awareness on DB has been gradually raised in the JICA's ODA recipient countries and their executing agencies. Its progressive approach is appreciated by FIDIC as well as the Multilateral Development Banks. The ATW and AAW done in 2010 in Tokyo were repeated in Manila in November 2012, which invited candidates for adjudicator from Sri Lanka, Indonesia, Vietnam, and the Philippines. It is expected that new national lists of adjudicators will be established in the Asian region in the very near future.