Columns

A Multi-Option System Helps
Get to the Bottom of “Big Dig” Conflicts

Barbara Epstein Stedman

The innovative multi-option approach to dispute resolution, pioneered by Professor Frank E. A. Sander in the judicial system, has led to broader applications in a number of different arenas, including the construction industry.1

Large construction projects invariably involve multiple parties, deadlines, coordination, financing concerns, conflicting implementation and profit motives, unforeseen circumstances, community issues, and ethnic and cultural differences. In effect, they are a veritable breeding ground for disputes at all stages of the planning and implementation process.

Litigation and arbitration, long the traditional avenue for resolving legal conflicts in the construction industry, have been augmented or replaced in recent years by a variety of innovative alternative dispute resolution processes, including partnering, dispute review boards, and mediation. Although these processes frequently stand alone, as a group they offer the components for a multi-option dispute resolution system.

Boston’s massive Central Artery/Harbor Tunnel construction project, known as the “Big Dig,” demonstrates the effective utilization of a comprehensive multi-option dispute prevention and resolution program that addresses potential and real conflicts throughout the life of a mega-construction project.

The Big Dig is the largest single construction project in the history of the United States. It is critical to the future of Boston in many ways, not the least of which is that the existing north-south “expressway” through the city was designed to

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handle 75,000 vehicles per day, but currently carries 190,000 vehicles daily. When completed, the new underground central artery will reshape the heart of downtown Boston's business and financial districts, as well as reopen its waterfront area.

Among other components, this historic project includes the design and construction of an immersed four-lane tube tunnel under Boston Harbor; multiple complex major highway interchanges within the city limits; a new highway to be constructed under ten active railroad tracks; a depressed multi-lane highway through the center of Boston; and a 14-lane river crossing.

The work, now one-third complete, is expected to take approximately eight more years and the current projected cost is $11 billion. It involves more than 75 prime construction contracts (with many in the $100-to-$400 million range) as well as hundreds of subcontracts.

The project is being built under the auspices of the Massachusetts Highway Department, a state agency, with the assistance of a management consultant, a joint venture of Bechtel Corporation and Parsons Brinckerhoff Company. The Federal Highway Administration is the major source of funding for the project, and is actively involved in overseeing the design and construction.

From its inception, planners of the Big Dig recognized that this historic project would greatly benefit from a comprehensive dispute resolution process. They hoped that planning and implementing a multi-option system, using flexible and innovative techniques, would result in: early resolution of internal claims; a reduction of internal costs, time and energy spent in the litigation process; a reduction in external costs of legal fees and experts; an increase in management flexibility and control over handling disputes; improved communication; and preservation of good working relationships.

Since Massachusetts law has specific requirements for bringing claims against a state agency, it was determined by the project's planners that participation in an ADR Program was mandatory prior to any participant filing a legal claim.

After conducting a thorough review of other dispute resolution systems and consulting with representatives of various government agencies, construction industry groups, members of local and national construction bar, ADR and mediation specialists, the project planners came up with a comprehensive program with provisions for early intervention and various dispute resolution procedures throughout the life of the project.

To meet the needs of the Big Dig, the planners included the following mechanisms: partnering retreats available to all major contractors; early intervention and multi-level procedures for resolving issues before they evolve into claims; three-member dispute review boards for resolving claims and other matters; and informal mediation at any stage of the dispute.

Each of these dispute resolution opportunities constitutes a “door” to potential dispute resolution as