

How Does an Arbitration Provision Affect my Public Construction Contract?

Many standard form construction contracts contain a dispute resolution clause that specifies arbitration as the means of resolving a dispute between the Contractor and the Owner. For example, subsection 15.4 of the AIA-201 (2017), permits the parties to have their disputes be resolved by binding arbitration.

Arbitration is a dispute resolution mechanism by which the parties contract to have certain disputes resolved by a third-party who issues a final and binding decision as to the dispute. The overarching benefit of a construction contract with an arbitration clause is that it allows the parties to choose how they resolve the dispute, rather than allowing a judge or jury decide for them. This can save time, money, and even face. Because arbitration agreements can specify the rules the arbitrator must abide by, they allow the parties almost unfettered control over the process, something usually dictated under court rules. Some important preliminary questions that should be asked are:

1. Does a valid agreement to arbitration exist?
2. Does the dispute between the parties fall within the scope of the arbitration agreement?
3. Do preconditions to arbitration exist? If so, have those conditions been met?

Depending on the language in the arbitration agreement, these questions may either be answered by the court or the arbitrator. Consult with a licensed attorney to understand how your dispute resolution clause operates in your contract.