# [1. DISPUTES PREVENTION AND RESOLUTION TECHNIQUES IN THE CONSTRUCTION INDUSTRY (RS23-1)](https://www.construction-institute.org/disputes-prevention-and-resolution-techniques-in-the-construction-industry)

**Report Summary:** Dispute resolution techniques include various methods to prevent and resolve disputes. The most valuable methods are those that prevent or resolve disputes as early as possible at the project level under the control of those directly involved.

Three main underlying causes of construction disputes are:

* Project uncertainty that stems from pre-existing conditions, outside forces, and/or complexity that may result in changes beyond the parties’ expectations and control.
* Problems in the contracting process, such as imperfect contracts, incomplete scope definition, unrealistic expectations with regard to cost or completion dates, and poor performance in executing the work.
* Personal issues that result from poor interpersonal skills, poor communication, lack of responsiveness, and unethical or opportunistic behavior.

If these causes are not addressed, disagreements could result that may escalate into litigation. This escalating process will involve more people, additional time, and higher costs. However, much can be done during the pre-construction engineering stage to minimize and avoid disputes. Specifics include engagement in:

* Competent engineering and documentation
* Constructability analysis
* Realistic risk allocation
* Dispute resolution clauses
* Partnering
* Incentive programs

Dispute resolution techniques include:

* Step negotiations
* Standing neutral

Conflict resolution techniques include seeking the following:

* Advisory opinion
* Fact-based mediation
* A mini-trial
* Non-binding arbitration
* Binding arbitration
* Private judgement

**Key Takeaways:**

## (1) Focus on dispute prevention as well as dispute resolution and emphasize the need to resolve issues on-site in a timely manner.

## (Project Phase: Detailed Scope through Turnover)

* Implement structured training in negotiation and conflict resolution skills for project managers to enhance their on-site issue resolution capabilities.
* Establish formalized on-site dispute resolution mechanisms, such as Dispute Review Boards (DRBs), to address conflicts promptly and avoid escalation.
* Facilitate early intervention by project sponsors or advisors to resolve issues at the project level before involving external parties.
* Promote honest, transparent communication among all project stakeholders to prevent misunderstandings and encourage collaborative problem-solving.
* Regularly review project documentation and contracts to ensure clarity in responsibilities and minimize potential sources of dispute.

## (2) Move away from the concept of a claim as the product of a dispute.

## (Project Phase: Detailed Scope through Turnover)

* Encourage the early and proactive identification and resolution of potential claims to prevent escalation into formal disputes.
* Treat claims as a routine part of project management, addressing them constructively to avoid adversarial outcomes.
* Document issues thoroughly and consistently to provide clarity and support collaborative problem-solving rather than adversarial claims.
* Develop clear communication channels for reporting and discussing claims to maintain transparency and mutual understanding.
* Focus on continuous improvement in contract administration practices to mitigate claim occurrences and strengthen project relationships.

## (3) Demonstrate conviction through the systematic use of dispute prevention and resolution techniques throughout the design and construction phases.

## (Project Phase: Detailed Scope through Turnover)

* Integrate dispute prevention clauses in contracts to set clear expectations for resolving issues collaboratively and efficiently.
* Apply constructability reviews during the design phase to identify and mitigate potential issues that could lead to disputes during construction.
* Establish risk-sharing mechanisms that allocate responsibilities fairly, thereby reducing misunderstandings and minimizing claims during the project.
* Use partnering agreements to promote trust and open communication, aligning all parties toward common project goals.
* Schedule regular check-ins among project teams to address emerging issues proactively and reinforce a cooperative approach to conflict resolution.

## (4) ‘Start right’: Implement strategies during the preconstruction engineering stage to reduce project uncertainties and minimize process problems.

## (Project Phase: Detailed Scope through Turnover)

* Deploy competent engineering and documentation.
* Perform constructability analysis.
* Conduct realistic risk allocation.
* Identify disputes resolution clauses.
* Enhance partnering.
* Implement incentive programs.

## (5) ‘Stay right’: Implement partnering agreements and team building to improve interpersonal skills, responsiveness, and negotiating ability.

## (Project Phase: Detailed Scope through Turnover)

* Cultivate project partnering.
* Implement training and development.
* Ensure honest negotiation.

## (6) Provide for resolution: Implement procedures to facilitate the quick and efficient on-site resolution of disputes, and keep project managers involved in the process.

## (Project Phase: Detailed Scope through Turnover)

* Glean advisory opinion.
* Ensure fact-based mediation.
* Encourage mini-trials.
* Implement nonbinding arbitration.
* Implement binding arbitration.
* Encourage private judging.

## [(7) Tool: Prevention and Resolution of Disputes Using Disputes Review Boards (IR23-2)](https://www.construction-institute.org/prevention-and-resolution-of-disputes-using-disputes-review-boards)

## (Project Phase: Detailed Scope through Turnover)

* Document disputes: The process for dispute prevention and resolution is intended to be documented with written submittals to the DRB.
* Resolve quickly: Disputes shall be considered as quickly as possible, taking into consideration particular circumstances and the time required for documentation.
* Present complete arguments: Neither owner nor contractor should rely on the DRB to develop arguments. Presentations must be complete and questioning between parties must be allowed.
* Minimize formality: The key to success lies in the trust among all parties; therefore, a simple consensual process with minimal formalities should be employed.
* Focus on facts: Disputes shall be resolved as quickly as possible by focusing on record or fact.

## [(8) Tool: Disputes Potential Index, Version 2.0 (SP23-3)](https://www.construction-institute.org/disputes-potential-index-version-2-0)

## (Project Phase: Detailed Scope through Turnover)

This tool is designed to:

* Evaluate disputes potential via logistic regression analysis.
* Develop the Disputes Potential Index (DPI) model from 21 project variable questions into eight input variables.
* Calculate a model score as the probability (percentage) for good, average, or poor dispute performance.
* Use the DPI to ‘start right’ and ‘stay right’ in terms of contract readiness review and periodic monitoring.
* Provide insights into the potential for disputes based on the owner's management, contractor's organization, project complexity, project size, financial planning, scope definition, and risk.