

# Project Dispute Resolution—Building an Improved Model in an Era of Larger Projects, Multiple Delivery Systems, and Fast-Track Projects

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When the initial partnering model was conceived in the late 1980s, a key objective was to create an effective dispute resolution process that would result in reducing the number of claims and litigation being generated on projects. One vehicle to achieve this objective was the issue resolution process. Project teams who have correctly applied the concept have reaped the benefits and received a return on investment for their efforts. However, the truth is, issue resolution has been inconsistently implemented on projects, and the concept has been grossly misunderstood within the industry, producing inconsistent results on projects.

The success of a project dispute resolution process is dependant not just on the resolution process itself, but also on how well a collaborative organization and problem-solving culture is developed and sustained on the project. This is critical in an era where multiple project delivery systems are prevalent.

Many in the industry jump to the conclusion that a one- or two-day partnering workshop will produce the answer to dispute resolution. However, these people fail to focus on other key components that will ensure an effective dispute resolution process. The intent of this article is to revisit the issue resolution concept, understand inherent weaknesses in the process, and produce an approach that will better meet current industry needs.

## Fundamentals of Issue Resolution/Escalation

A key premise of the issue escalation model is to avoid the stove-piping of issues as depicted in Exhibit 1. Stove-piping of issues occurs when an organization involved with a particular issue develops their own version/interpretation of the issue at the field or project level, and this version then gets “escalated” to the executive level of their respective organization without any of the other organizations having had the opportunity to discuss the issue with the other party. Stove-piping can occur inadvertently where concerned project personnel just want to get an issue resolved as quickly as possible, or can happen deliberately where organizations go into a “case-building” mode before revealing their position to the other organizations.

In either situation, the result is that each executive may receive a different version of what the issue and facts surrounding the issue may actually be. Additionally, an executive in one organization may receive the issue at a different time than his counterpart receives it in the other organization(s), if it is received at all by the other executive(s). This creates an inequitable escalation. This also produces a “silo” effect where issues remain within individual organizations. The result is when an organization prematurely escalate an issue, the organization now must take a position on the issue at a high level that will be difficult to retreat from.

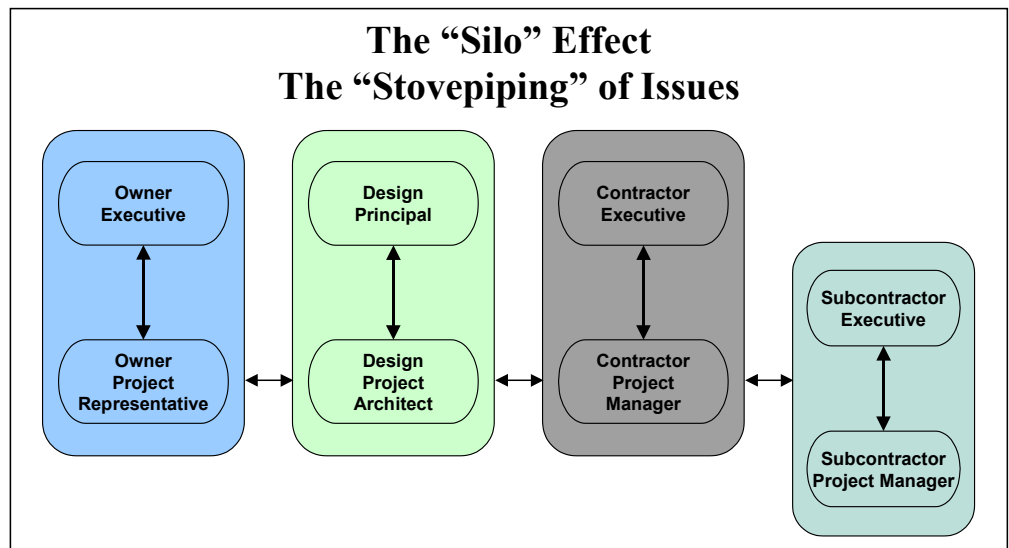


Exhibit 1

The issue escalation process is intended to level the playing field and ensure all issues are first dealt with at the project level, and then, if no resolution is reached, are escalated equitably upwards *as a team* to the next level of management.

## Weaknesses of Past Issue Resolution/Escalation Models

While the principles of issue escalation embraced by the original partnering model are fundamentally sound and can assist a project team resolve the thorniest of disagreements if properly applied, the original process has been beset by a number of weaknesses that may cause it to fail, as described below:

### The Silo Effect is Perpetuated by Senior Managers

Construction industry personnel tend to get promoted through the ranks based not only on their knowledge, performance, and people-handling skills, but also on their ability to solve problems. In an effort to resolve issues, a senior manager will occasionally perpetuate the “silo effect” described above by “grabbing” an issue from a subordinate who has brought a simmering problem that really should have been pushed back to the appropriate level. Instead of requiring facts and asking if the individual has addressed the disagreement with his/her counterpart in the other organization, the senior manager gets involved with the issue. Once the senior manager is involved, the issue has effectively been escalated, whether or not the entire project organization knows that the problem has been escalated. The silo effect has been perpetuated and issue escalation has failed.

### Failure to Locate the Disagreement within the Project Organization

Sometimes a thorny issue will arise that causes managers from each organization to focus their personnel on preparing the best case for their side of the disagreement. In such cases, managers have forgotten the principals of issue escalation, and multiple levels of management may be working the issue within a respective organization. As the organizations become increasingly polarized, neither organization knows on what level the issue is being worked (field, project management, or operations). It is one organization versus the other (us versus them) on this particular issue. In these cases, issue escalation has failed and trust between the organizations is in a precarious state.

### Different Escalation Routes for Different Issues

Some have dismissed the original escalation process as unrealistic and only good in theory, because they say the resolution of an issue may follow different paths with different personnel, depending on the specific nature of the issue. For example, these critics say the personnel involved with resolving a structural issue will be different than the personnel required to resolve a MEP issue and the issue escalation ladders do not account for this. These observations are correct, but the problem is not with issue escalation. The problem is with how the process was conceived for the specific project situation and then communicated to all personnel on the team.

### Process is Treated as an Exercise

Issue escalation is only as good as the commitment from senior managers to make it work. If the process is only an exercise in an effort to “check the box” during an event-oriented partnering workshop, the chances of its existence as a valuable tool to the team after the workshop are greatly reduced. If the process is not continually reinforced during the project by senior managers, it will die as soon as people walk out of the workshop. In these situations, the end result could be that the project moves along smoothly until the first major disagreement occurs. Then everyone falls back on typical case-building activities.

## **STEPS TO A BETTER ISSUE RESOLUTION PROCESSES**

In consideration of the above weaknesses, and recognizing the trend in project delivery toward multiple delivery methods and faster-track projects, the following are three recommended steps to building better issue escalation processes for the future on your projects:

1. Develop the collaborative organization
2. Implement a supporting partnering process
3. Build an issue escalation/resolution process

You cannot have one of the above steps without the other for effective and timely dispute resolution to occur.

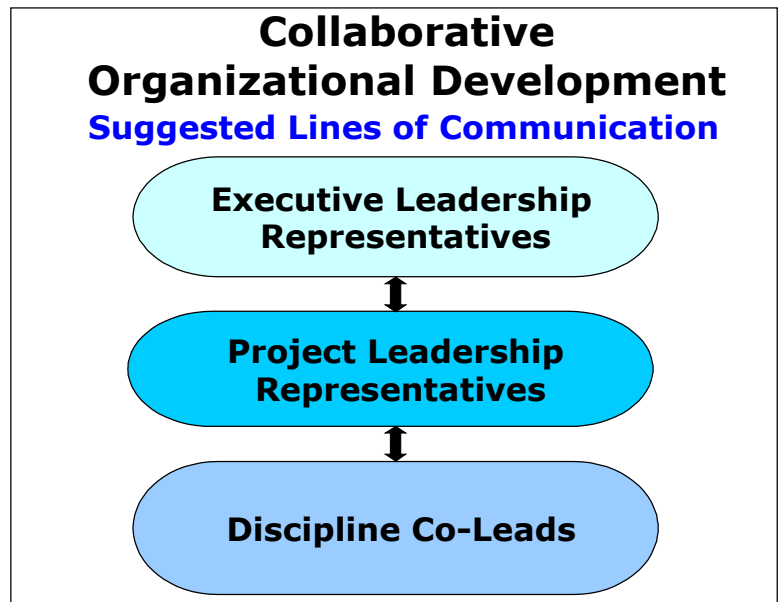
### Collaborative Organizational Development

A key step in issue resolution that is frequently missed by the project team is the development of the collaborative organization chart. This differs from day-to-day project organization charts because it attempts to identify discipline-specific, cross-organizational teams with co-leads that will be held accountable for resolution of issues pertinent to their discipline area. Exhibit 2 depicts a base team structure at three distinct different levels of management. This serves to eliminate the silo effect by focusing on “team” escalation of issues. From this structure, any project can evolve to a structure that best suits their needs. Exhibit 3 is an example team-based structure for a large highway project, organized around disciplines. Exhibit 4 is a team-based structure for a general building project.

The four different levels of each exhibit are organized as follows:

- Level 1—within each discipline this includes any project personnel involved with this particular discipline.
- Level 2—these are the individuals designated as co-leads for this discipline. Any issues involving this discipline will need to pass through these individuals before being escalated out of this discipline. Project leaders from Level 3 need to identify who these co-leads will be for each discipline.
- Level 3—these are the project leaders, usually comprised of the project manager of the contractor, project architect/engineer from designer, and their counterpart(s) from the owner/agency.
- Level 4—these are off-site executive representatives from the various organizations.

Exhibit 2



### Example Highway Collaborative Organization Chart

Level	ROW	Utilities	Environmental	Public Outreach	Project Controls	Design	Construction	Quality Mgmt.	Safety
1	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team
2	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead	Discipline Co-Leads Owner Co-Lead Contractor Co-Lead Engineer Co-Lead
3	Project Leadership Team Owner Representative(s) Contractor Representative(s) Engineer Representative(s)								
4	Executive Leadership Team Owner Representative(s) Contractor Representative(s) Engineer Representative(s)								

Exhibit 3

This structure will vary depending on the size and complexity of the project, and may actually involve a fifth level in larger applications.

To reinforce that as many issues as possible should be resolved in the field, the ladder is “inverted” to place those who will be truly building the project at the top of the organization—the field personnel (Level 1). Senior level players are at the bottom of this ladder to emphasize that they should be the last resort at resolving the issue (Level 4). Their time is limited, they will not have as much specific knowledge about the particular problem, and they will need a lot of information to engage in problem resolution.

Not everyone in the project organization appears on this chart. Only those *who have clear counterparts from the other organization(s) and have clear decision-making authority for their respective teams in times of disagreement* qualify to be on this chart. The reason for this is that this is a dispute resolution chart, not a day-to-day organizational chart. Therefore, lateral supporting players who provide information to the decision-makers do not appear on this chart. This clarifies and simplifies the process.

Level	Site Work	Civil/Structural	MEP	Tenant Improvement	Commissioning	Quality/Close-Out
<b>1</b>	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team	Discipline Team
<b>2</b>	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead	Discipline Co-Leads Owner Co-Lead Design Co-Lead Contractor Co-Lead
<b>3</b>	<b>Project Leadership Team</b> Owner Representative(s) Design Representative(s) Contractor Representative(s)					
<b>4</b>	<b>Executive Leadership Team</b> Owner Representative(s) Design Representative(s) Contractor Representative(s)					

*Exhibit 4*

The format of these ladders is a departure from the traditional format where companies are organized on the chart in organizational columns. The columns only reinforced the silo effect, and made it difficult on larger project applications to really ascertain below the project management level who the true counterparts are for a given issue. Benefits of this new format include:

- Organizing by discipline follows the natural organization breakdown of the project and allows easier identification of where an issue should reside depending on its specific nature.
- Organizing by teams with representation from each organization by discipline drives accountability to a specific group of individuals for resolution and also sets the tone for a team climate in all aspects of how business will be conducted on the project.
- Depending on the discipline, subconsultant or subcontractor representation can be included on the team and in some situations actually be named co-leads for a discipline.
- On smaller projects, it is logical that one individual from an organization may appear in one or more discipline areas at the Level 2 co-lead level. Regardless of where, or how many times, an individual appears on the chart, the key is to identify who will be responsible for resolving issues in a specific discipline area.

Discipline-based organizational development is a critical first step for developing an issue resolution process. Those who bypass this step as they attempt to partner a project (particularly large and complex projects), have significantly reduced their chances of creating an effective process.

**Supporting the Partnering Process**

Once the path for issue resolution has been defined, the next step to effective issue resolution is to establish a culture of accountability within the partnering process. Driving accountability, not by individual organizations, but by team organizations, as depicted in Exhibits 3 and 4.

An effective partnering process will not be a workshop. Therefore, the intent here is not to describe the activities of a partnering workshop but to focus on the follow-up activities necessary to sustain the effort toward issue resolution. The process should be ongoing and should include the following elements:

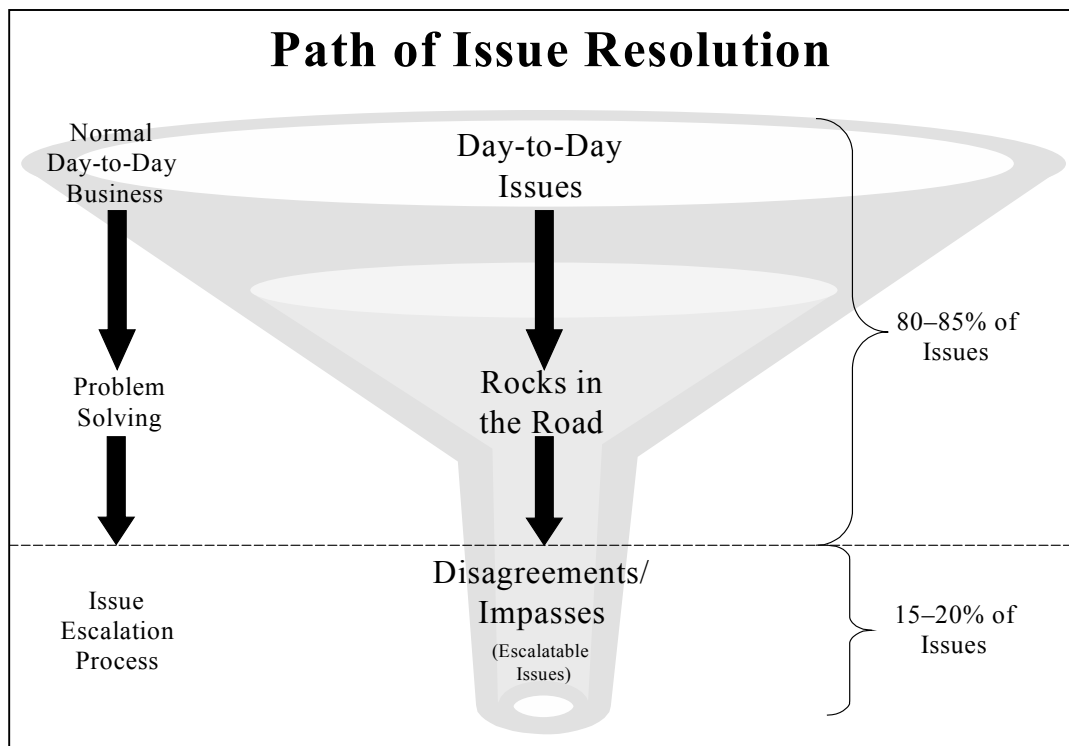
- *Ongoing executive level involvement* (Level 4 of the organizational chart in Exhibits 3 and 4). Executives should be meeting on a proactive basis to assess project progress, relationships, and culture of the organization. The effectiveness of the relationships developed at this level will set the culture for the project and set the tone for how issues will be resolved. It is recommended that executives should be meeting no less than once per quarter. At a minimum, a joint project update should be given by the project leadership team (Level 3 in Exhibits 3 and 4) to the executives as well as status on all unresolved issues. Agendas beyond these two critical items can vary depending on the needs of the project.
- *Ongoing reporting processes at the project level.* Reporting should be occurring from discipline co-leads to the project leadership team on achievement of project goals, status of potential escalatable issues (See definition below), and team dynamics. This reporting should be done no less than once per month. Face-to-face reports between the co-leads and the project leadership team enhance a culture of accountability on the team. Many projects will rotate different discipline co-leads into the face-to-face meetings over a period of time.

Once a sustainable reporting process has been established between the co-lead teams through the executive teams, then the project is ready to support an effective issue resolution process.

### Issue Escalation Process

#### The Difference Between Issues and Disagreements

Project team members frequently get confused between what is an issue that just needs to get resolved and what is an issue that needs to be escalated. Exhibit 5 depicts the path of issue resolution. It shows that on a typical project 80–85 percent of all of the issues the team will encounter on a project can be resolved prior to going through an issue escalation process. A portion of these issues will get handled through normal day-to-day business. Some of these do not pose real threats to the schedule, budget, safety, or quality of the project and are easily resolved in a quick meeting or phone call. In these situations, expertise and advice may be taken from all levels of management to get the issue resolved.



Other issues will require a bit more focus from two or more individuals from different organizations. They threaten the success of the project if not resolved. These are called **rocks in the road** or just plain rocks. Rocks may involve clarifications of drawings, submittals or RFIs, resolution of technical issues, coordinating drawings, constructability issues, or field activities. A rock is “an issue that is a problem or challenge on the project that can be worked through and resolved with a counterpart from the other organization.”

Exhibit 5

However, with 15–20 percent of the issues on a project, there is a chance that counterparts from different organizations may reach a stalemate on how to resolve it. An **escalatable issue** is “an issue that imminently affects the project or project team goals and cannot be resolved at the current level of management—counterparts are clearly at an impasse or the issue is outside the authority of the counterparts.” These are rocks that should go into the issue escalation process and become escalatable issues.

Some may wonder why all the fuss is generated over just 15–20 percent of the issues. This is where the 80/20 rule applies. If disagreements are not handled in an appropriate manner, then there is a good chance that *20 percent of the issues will negatively impact 80 percent of the relationships on the project. It only takes one real impact disagreement to polarize organizations and plant the seeds of distrust that could ultimately undo the relationship.*

### Guidelines for Issue Escalation

The partnering process does not create a perfect world and recognizes that disagreements will arise during the course of a project. It is there to deal with the 15–20 percent of the issues that become disagreements. The issue escalation process was designed to help the project participants resolve the disagreements as they arise. To accomplish this, it is essential that a consistent set of guidelines be uniformly applied across the project.

The intent of the process is to ensure as many disagreements as possible are resolved at what is referred to as “the lowest level” or more appropriately “the field level.” However, field personnel are encouraged to elevate the issues if they cannot resolve them. This creates a pressure release point when relationships get stressed to the point where the business relationship is threatened. Above all else, it is important that the business relationship be preserved. Other guidelines include:

- *Present Facts*—to reduce the effect of emotions and strong personalities, disagreeing parties are encouraged to produce facts to back their position versus opinions when escalating the issue. That way the next level of management can make a business decision based on solid information.
- *Escalate Equitably*—to ensure equitable escalation of the issue, disagreeing parties are encouraged to notify their peer from the other organization that they will be escalating the issue so that the issue can elevate within the organizations at the same time. This helps reduce the “silo effect” of escalating issues that could result in an issue reaching a very high level within one organization while still being at the field level of another organization. This could cause one organization to make a hasty decision at a higher level that that it will not be able to back down from.
- *Do not use up all of the float on the schedule before escalating an issue*—with more and more projects delivered in a fast-track or design-build mode, managers on these projects are laying down this guideline to ensure time-sensitive issues are escalated before they impact the schedule and consequently the budget.
- *Live with the decision*—once an issue has been escalated and a decision rendered by the next level of management, those below must abide by the decision for the sake of the project.

### Required Escalation Information

To assist project personnel in knowing what information will be required to be passed on to the next level of management, senior managers are encouraged to require brief write-ups of the following information from escalating individuals (Exhibit 6). Ideally, a presentation of this information should be made from each side in the dispute to both senior managers at the next level of management in the same room. Information should include:

- *Basic description of the issue with supporting facts*
- *Goals Affected*—this is to remind all that despite the disagreement we are still working toward team goals. Additionally, it gets parties in a disagreement focused toward positive aspects of the relationship, and this in turn may help diffuse emotions surrounding the issue.
- *Contract Specifications Affected*—this is a critical piece of the information. A number of disputes arise on projects because personnel either did not understand what the contract says or did not read the contract at all. Forcing individuals to recite specific contract specifications affected by the dispute will often cause a disagreement to go away once individuals understand who was contractually obligated in any given situations. However, if an interpretation issue arises regarding what the contract says, then that may be where the dispute has its roots, so the issue escalation process should continue.
- *Actions taken to date*—brief description describing what has been done to resolve the issue
- *Proposed resolutions*—while project personnel may not have signature authority to resolve disputes on some issues, they certainly should have enough knowledge about an issue to propose a solution to resolve the disagreement. The last thing the next level of management wants to see happen is to have an issue dropped on their lap with no ideas on how to resolve it.
- *Why resolution has failed to date*—a brief explanation on why we are still at a disagreement if all of the above has previously been done.

#### **Issue Escalation Information**

- At the time of escalation, the following items must be addressed:
  - Description of issue, identify which project goals are impacted, and identify the specific contract provisions affected
  - Facts to the issue—analysis
  - Actions taken to date
  - Provide any proposed resolutions—recommended plan forward
  - Explain/discuss why actions/resolution failed to date
  - Provide timeline needed to get the issue resolved

*Exhibit 6*

- *Timeline needed to resolve the issue*—in the early days of partnering, project teams would stipulate timeframes for how long issues should stay at any given level before escalation is required. For example, 2–4 hours for an issue to stay at Level 1, one day at Level 2, two days at Level 3, etc. *While good in theory, this approach was difficult to implement in practice, as every issue is different in scope and nature.* Therefore, this revised approach provides flexibility on timeframes depending on the specific nature of the issue. Does it need to be resolved today, in a few days, next week, in a month, or in a few months?

### Role of Senior Managers

To reinforce the escalation process within their organizations, senior managers are encouraged to do the following when a subordinate raises an issue that even sniffs of a disagreement. Ask three simple questions to maintain the integrity of the process:

- What level within the organization is the issue currently being resolved? If the answer is “I don’t know,” then refer the subordinate to the escalation chart so expectations can be set as to how the issue will be resolved.
- Have you spoken with your counterpart from the other organization(s) regarding the issue? If the answer is “no,” then the issue should be pushed back down to the subordinate and his counterpart.
- Have you filled out the escalation information (Exhibit 6)? If the answer is “no,” then the issue should be once again pushed back to the subordinate and his counterpart.

If the subordinate answers “yes” to all of the above questions, then the senior manager should be asking when and where an escalation meeting with his counterpart should be scheduled.

### What Senior Management Can Do Once An Issue Has Been Escalated

Once an issue has been escalated and heard, the level of management that has received the issue has a number of options:

- Redirect the issue back to the escalating team or another team for further fact-finding or problem solving with a set date for reporting back.
- Resolve the issue right there with the escalating team.
- Thank the escalating team for the information, excuse the escalating team from the room, and resolve the disagreement on their own.
- After review of the information, agree to disagree and continue the escalation process on to the next level of management.

If the issue is resolved, it is important that the team determine how the resolution will be communicated to the entire project team to ensure everyone is on the same page with the status of the issue.

### **Conclusions**

With the advent of different project delivery systems, fast-track projects, and larger projects, it is critical that project leaders come to grips with how they will deal with disagreements and disputes that will inevitably arise. These issues will arise not because their project personnel have intentions to argue from the start of the project, but because human beings all have different perceptions of what they see and read within the contract and specifications. Building an effective issue escalation process requires 1) Developing a collaborative organization chart, 2) Implementing a supporting partnering process, and 3) Implementing a sound set of issue escalation principles. Following these steps will raise the chances of success on your project and leave you with a process that builds and improves upon the original partnering model.