

# ARBITRATION

## (Part One)

By Sam K. Abdulaziz  
Abdulaziz, Grossbart & Rudman

As most of you should know, arbitration has become very prominent in construction disputes. Many, if not most of the contracts include an arbitration provision. One of the greatest benefits of arbitration is that you should be able to get an arbitrator or arbitrators who understand construction law. I was personally involved in a civil litigation and typically, just before the trial begins, the trial judge will call the parties into chambers to discuss certain matters before the trial begins. I had one trial judge who asked me "I see you subpoenaed the plans and specifications. Why did you do that? They are so big and they are so dirty." I then wondered how such a trial judge could possibly handle a construction case given the fact that the judge didn't understand the importance of the plans and specifications.

In addition to arbitration pursuant to state court, arbitration in the Federal Courts are called the Federal Arbitration Act (FAA). Among other things, the FAA provides expedited judicial review to confirm, vacate, or modify arbitration awards. A Federal Court must confirm an arbitration award unless it is vacated, modified, or corrected in accordance with the federal law. The federal law lists grounds for vacating an award including where the award was procured by "corruption, fraud, or undue means" or where the arbitrators were guilty of misconduct, or exceeded their powers. Some of the grounds for modifying or correcting an award, include "evident material miscalculation" "evident material mistake" and "imperfections in a matter of form not affecting the merits."

Under California law, there is no such expedited judicial review unless the arbitration provision in the contract calls for it. Here, the court will follow what the parties agree to in the contracts. Under California law, an arbitration award can be modified or corrected in accordance with the arbitration provision in the contract, or if there is no provision that applies, in accordance with the law which is as follows:

Code of Civil Procedure section 1285 states "Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award."

There are very specific rules that are required in this procedure. There are also restrictions and they are very hard to overturn.

Please see next month's issue for the specific laws dealing with changing an arbitration award in California.

Attorney Sam Abdulaziz of Abdulaziz, Grossbart & Rudman has been practicing construction law for over 30 years. He has written a book called "California Construction Law" which is updated annually. He represents numerous construction trade associations and contractors. He appears at Contractors State License Board meetings and has argued a number of cases before the appellate courts, including the California Supreme Court dealing with the "Pay-If-Paid Clause." Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients. This document is of a general nature and is intended to highlight areas of the subject matter being discussed and may not contain all of the information; it should not be used as a substitute for legal advice. This document does not create an attorney-client relationship, or protect any confidential information until a written agreement is signed. You should seek the aid and advice of a competent attorney, accountant and/or other professional instead of relying on the presentation and/or documents. Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman, P.O. Box 15458, North Hollywood, CA 91615-5458; (818) 760-2000, Facsimile (818) 760-3908; or by E-Mail at [info@agrlaw.net](mailto:info@agrlaw.net). On the Internet, visit our Website at [www.agrlaw.net](http://www.agrlaw.net)

