

SP0080307RDRB PROSECUTION AND PROGRESS – PROSECUTION OF WORK SPECIFICATION
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Comments: (12/7/20, Internal)

1. 8-3.7.6 Membership: The Board will consist of members pre-selected by the Engineer and the President of the Florida Transportation Builders' Association (FTBA) and posted on the Department's Website.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, he/she shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Once established, the Board will remain active and in full force and effect. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Board shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

What Board is this referencing since Regional Boards only have standing for one year at a time?

Response: This language has been a part of the RDRB Spec for several years. It allows the Board to hear disputes even after Final Acceptance of the project. It does not refer to the individual Board members, but the Board as a whole. This language is appropriate for RDRB's.

2. Also, the payment stated therein maintains the possibility of discrepancy between any future RDRB agreement payment adjustment and that stated in the Contract containing this spec. This is a current problem.

Response: Payment rates are established for newly formed Boards on a contract-by-contract basis. Since RDRB's are only used on projects below \$15M, the likelihood of an RDRB being in place on a multi-year project during a DRB rate increase is low. If this does occur, it can be dealt with on a project-level basis.

3. More importantly, the spec states:
8-3.7.2.1 Disputes Review Hearings: Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board.

The completed DRB hearing of any unresolved dispute or claims is a condition precedent to a Party having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law, on such unresolved disputes or claims.

Since only disputes or claims that have not been “duly preserved” are eligible to be heard by the Board, it should be recognized by the Parties that any such determination by the Board (ad hoc) should not be taken lightly and the “determination” is worthy of a hearing to hear the Parties positions, as this is often a dispute of its own. The FDOT/FTBA should revisit this language.

Response: Thank you for the comment. Issue preservation has been a topic of discussion of Regional and Project-Specific Boards for some time. We are open to discuss this issue for future versions of the Spec.

4. Section 8-3.7.2

First paragraph, second sentence: Delete “Dispute Review Board” and change to “Board”

First paragraph, third sentence: Change to read; “Either Party may refer a dispute or claim to the Board for a Dispute Review Hearing.”

Response:

5. Section 8-3.7.2.1

First paragraph, first sentence: Change to read; “.....as determined by the Board will be eligible to be heard by the Board for a Dispute Review Hearing.”

First paragraph, second sentence: Change to read; “Disputes or Claims shall be referred to the Board for a Disputes Review Hearing by providing.....”

Response:

6. Second paragraph, first sentence: Capitalize the words “party”

Response:

7. There is no provision for submittal of rebuttals to the position papers. Presently, the Parties have 5 days up to the date of the Hearing to submit rebuttals. The present system appears to work fine and should be included. It should be stressed that the rebuttals are only to rebut the information include in the other Party’s position paper.

Response:

8. Fourth paragraph, first sentence: Change to read; “.....within 15 days completion of the Disputes Review Hearing to assist in the resolution.....”

Response:

9. Fifth paragraph: Change to read; “Recommendations provided by the Board will not be binding on either Party unless provided for under other provisions of the Contract Documents.” (Some

Contracts have separate provisions for binding recommendation, i.e. when incentive/disincentive payments are provided for.)

Response:

10. Sixth paragraph, second sentence: Change “party” to “Party”

Response:

11. Eighth paragraph, second sentence: Change to read; “.....and upon the request of either Party shall then proceed to schedule a Disputes Review Hearing to make a recommendation.....” (If issues cannot be resolved between the Parties, either Party should be able to request a hearing for a recommendation. The request should not have to be mutual. If the request has to be mutual, then either Party could prevent the other Party from taking an issue to the Board for a hearing. That is not the intent of the DRB process.)

Response:

12. Tenth paragraph, second sentence: Change to read; “The completed Dispute Review Hearing of any unresolved dispute or claim.....”

Response:

13. Section 8-3.7.6

First paragraph: This paragraph, as written, relates to regional Boards and not to project specific Boards. For project specific Boards, the paragraph should be rewritten that each party shall select a Board member and those two Board members select the third Board member. All three Board members are to be approved by the Parties.

Third paragraph: The way this paragraph is written, the a Board could remain “active” for years even after the Board is no longer actively involved with the project, no DRB meetings, etc. Yet the Board members would have that Board count against them regarding the number of Boards upon which they serve even though there are no scheduled meetings and/or unresolved disputes. I personally have had that situation.

Response:

