

## **ORINATION FORM**

### **THE INFORMATION BELOW IS TO BE PROVIDED BY THE ORIGINATOR**

(The person who receives or originates the issue and needs to forward the issue for action.)



Modify Specification \_\_\_\_\_D0080037\_\_\_\_\_.

Section/File number



New Section \_\_\_\_\_.

Section number

**Subject:** Dispute Review Board

**Origination date:** 10/30/02

**Originator:** John Shriner

**Office/Phone:** Central Office Construction/ 850 414 4149 SC 994 4149

**Email address/** john.shriner@dot.state.fl.us

**Userid:** CN982JS

**Problem statement:** The changes made are in response to recommendations made by auditors.

**Information source:** Ananth Prasad.

**Background data:** None.

**Desired  
implementation  
date:**

Beginning with the July 2003 letting.



# Florida Department of Transportation

JEB BUSH  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

THOMAS F. BARRY, JR.  
SECRETARY

## **MEMORANDUM**

**DATE:** November 25, 2002

**TO:** Specification Review Distribution List

**FROM:** Duane F. Brautigam, P.E., State Specifications Engineer

**SUBJECT: Proposed Specifications Change – D0080373 – Prosecution of Work - Disputes Review Board.**

In accordance with Specification Development Procedures, we are sending you a copy of a proposed specification change to Prosecution of Work - Disputes Review Board.

This change was proposed by John Shriner, State Construction Office in response to recommendations made by the auditors.

Please share this proposal with others within your responsibility. Review comments are due within four weeks and should be sent to Mail Station 75 or to my attention via e-mail at SP965DB or duane.brautigam@dot.state.fl.us. Comments received after December 23, 2002 may not be considered. Your input is encouraged.

DFB/jho

Attachment

COMMENTS:

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Submitted by:

Phone #:

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**PROSECUTION OF WORK - DISPUTES REVIEW BOARD.**  
**(REV ~~4-15-02~~11-19-02)(FA ~~7-17-02~~)(1-03)**

ARTICLE 8-3.7 (of the Supplemental Specifications) is deleted and the following substituted:

**8-3.7 Disputes Review Board:** For this Contract, a Disputes Review Board will be established to assist in the resolution of disputes and claims arising out of the work on the Contract.

**8-3.7.1. Purpose:** The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes, claims, and controversies between the Department and the Contractor in an effort to avoid construction delay and future claims.

It is not intended for the Department or the Contractor to default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Department and Contractor to resolve potential disputes without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute resolution is unsuccessful. Either the Department or the Contractor may refer a dispute to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. It is a condition of this Contract that the parties shall use the Dispute Review Board. The Department and the Contractor agree that the submission of any unresolved dispute or claim to the Board is a condition precedent to the Department or the Contractor having the right to proceed to arbitration or litigation of such unresolved dispute or claim. The Department's Claim Review Committee will not entertain any issues on this project.

The recommendations of the Board will not be binding on either the Department or the Contractor, except that if Section 338 for Warranted Asphalt Pavement is a part of the Contract, the determinations of the Board as to Section 338 only will be binding and with no right of appeal by either party.

The Board will fairly and impartially consider disputes referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes.

**8-3.7.2. Continuance of Work During Dispute:** During the course of the Disputes Review Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the dispute.

**8-3.7.3. Membership:** The Disputes Review Board will consist of one member selected by the Department and approved by the Contractor, and one member selected by the Contractor and approved by the Department. The first two members will mutually select and agree on the third member. Normally, the third member will act as Chairman for all Board activities.

It is desirable that all Board members have at least ten years of experience with the type of construction involved in this project, in the interpretation of Contract Documents, and in contract dispute resolution. Board members must have attended the Dispute ~~Review~~ Resolution Board Foundation's Administration and Practices Workshop and must be on the Department's Lists of Candidate Members as provided on the Department's web site. The goal in selecting the third member is to complement the construction experience of the first two members, to provide leadership for the Board's activities, and to provide expertise in the area of administering alternative contract resolution proceedings. It is imperative that Board members not show or be perceived as showing partiality to either the Contractor or the Department. A Board member shall not have any conflict of interest, which could affect their ability to act in a disinterested and unbiased manner.

A person selected to the Board shall submit to the party appointing him/her a resume covering his/her applicable education and experience, *a list of all DRBs, with meeting frequencies, on which he/she currently serves*, and a disclosure statement covering, but not limited to, any of the following categories of relationships or prior involvement in this project:

a. Any direct or indirect ownership or financial interest in the Contractor awarded the project, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member.

b. Current employment by the Department, the Contractor awarded the contract, or the CEI consulting firm on the project. Service as a Dispute Review Board Member shall not be construed to be employment.

c. Current employment by any subcontractor or supplier on the project.

d. Current employment by a consulting engineering firm that will be seeking future contracts for CEI services from the Department.

e. Within the two year period immediately prior to award of the contract, employment by the Contractor awarded the contract, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member. Service as a Dispute Review Board Member shall not be construed to be employment.

f. A close personal relationship with any key individual in any firm involved in the contract.

g. A prior involvement in the project of a nature, which might be construed as compromising his/her ability to act impartially in carrying out the duties of the Board.

h. A contract as a consultant to the Contractor awarded the contract.

i. A contract as a consultant with any subcontractor or supplier on the project.

Category “a” and “b” relationships listed above shall disqualify a person from serving on the Board for this project. The other categories of relationships or prior involvement in this project listed above will be considered by the Contractor and the Department in arriving at their decision as to whether or not to accept a person as a member of the Board. If a prospective Board member who discloses a relationship or prior involvement in this project listed in other than category “a” or “b” is considered to be highly qualified and desirable as a Board member, the Contractor and the Department, by mutual agreement, can approve that person to serve on the Board.

If during the life of the contract, a Board member is made aware that a firm of which he/she is an employee is involved in the contract as a subcontractor or supplier, he/she shall immediately give notice to the Department and the Contractor. Upon receiving such notification, the Department or the Contractor may, within ten (10) days, give notice that this Board member is no longer acceptable and a new Board member shall be selected and approved as provided above. In no event, shall a Board member participate in a hearing by the Board of dispute involving a firm by which he is employed.

The Department may disqualify a person from serving on future Disputes Review Boards for Department projects who submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship that prohibits him/her from serving on the Board for this project or one of the possible conflicts of interest listed above.

Every attempt shall be made by the Department and the Contractor to complete the selection of Disputes Review Board members and execute the Three-Party Agreement prior to date of the preconstruction conference and, if applicable, the initial partnering workshop. The Department and the Contractor shall select their Board members and give the other party notice of the person they have selected to serve as a member of the Board. This notice shall be accompanied by the resume and disclosure statement submitted by that person.

Within ten (10) days of receiving the notice of selection of a Board member, the Department and the Contractor shall review the accompanying resume and disclosure statement, make such inquiries as each deems necessary and notify the other party in writing as to whether or not the

person selected is acceptable. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If a person selected is not acceptable to the other party, the party who selected that person shall within five (5) days select another person and provide to the other party to the contract a notification accompanied by a resume and disclosure statement.

Once the Contractor and the Department have agreed upon the first two members of the Board they shall immediately notify those members of their approval. Within one week of this notification, the first two members of the Board shall select the third member and give written notice to the Contractor and the Department accompanied by that person's resume and disclosure statement.

Within ten (10) days of receiving the notice of selection of a third member of the Board, the Department and the Contractor shall review the accompanying resume and disclosure statement, make such inquiries as each deems necessary and notify the first two members in writing as to whether or not the person selected is acceptable. If a person selected is not acceptable to the Contractor or the Department the first two members of the Board shall immediately select another person and provide notification accompanied by a resume and disclosure statement. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If, (1) the Department or the Contractor fail to provide the other party notice of selection of a Board Member within the time specified, herein; (2) the first two members of the Board fail to provide notice to the parties of their selection of the third member of the Board within the times specified, herein; or (3) the parties are unable to agree on appointment of a Board member within 60 days after award of the contract, that member shall be appointed by mutual consent of the Department's State Construction Engineer and the President of the Florida Transportation Builders Association.

Immediately after agreement is reached on all members of the Board the Contractor, the Department and the members of the Board shall proceed with execution of a Three Party Agreement as provided on the Department's web site. The execution of this agreement will not modify the requirements, terms or conditions of this Specification.

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.

Should the Department and the Contractor mutually agree to terminate a Disputes Review Board Three Party Agreement, the existing Disputes Review Board Three Party Agreement will remain in force until replaced by another a fully executed Disputes Review Board Three Party Agreement. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board Three Party Agreement 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.

**8-3.7.4. Basis of Payment:** A per day cost of \$3,300.00 has been established by the Department to reimburse the Contractor for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the Contractor for each day the Disputes Review Board is convened. For each day of the meeting, the Contractor shall compensate each Disputes Review Board member a sum of \$1,100.00. Such payment will be full compensation to the Board member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board. *Do not pay prior to the execution of the Three Party Agreement.*

The Department will pay all other non-salary and non-travel expenses related to operation of the Board. The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services.

If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

Payment shall be made under:

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|---------------------|----------------------------------|
| Item No. 999- 20-   | Disputes Review Board - per day. |
| Item No. 2999- 20 - | Disputes Review Board - per day. |