

0080307RDRB Prosecution of Work, Disputes Review Board  
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Charles E. Boyd, P.E.  
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Comment: (7-29-10) **8-3.7.8 Basis of Payment:** A per hearing cost of \$8,000.00 has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual dispute hearing. The Board chairman will receive \$3,000.00 for participation in the hearing ~~with~~ *while* the remaining two members will receive \$2,500.00 each.

Response: (7-29-10) Spelling correction made.

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Comments: (8-12-10) Text: 8-3.7.3 Membership - 2nd. paragraph - Why would this language not track the guidance given in the proposed 0080307DRB Prosecution and Program - Disputes Review Board - 8-3.7.5 Conflict of Interest?

Response: Selection process of members for Regional and Statewide DRBs is different than that for project specific DRBs.

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Comments: (8-13-10) Section 8-3.7.8 Limitation for Referral of Disputes or Claims to the Board appears to conflict with Specification Section 5-12.2.1 Claims For Extra Work. The claim spec allows 90 days for projects under \$3 million and 180 days for project over \$3 million for the contractor to prepare and submit claims. The DRB requirement should not be less than these limits. It seems logical that the Department would first review the claim prior to referring it to the DRB. Since the claim spec allows 90 or 180 days to submit the claim, it would seem that the time for taking an issue to DRB would be that amount of time plus some reasonable review and preparation time.

Response: Have revised the spec to match the timeframe requirements of 5-12.

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David Peters

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Comments: (8-16-10) Prosecution and Progress – Regional Disputes Review Board How does one determine whether a dispute or claim is "duly preserved under the terms of the contract?" What does that mean in relation to the contract? Does not a claim or a dispute by its very nature mean that the plaintiff believes that his claim is justified under the terms of the contract? It is the board's charter to evaluate the justification for the claim and if it is not justified on the face to issue a summary judgement.

Response: A DRB does not operate in the same manner as a court proceeding so there is not summary judgment that would be issued. A request for equitable adjustment would be considered duly preserved if it have been certified by the contractor and a claim would be considered duly preserved if it has been timely noticed, is certified and meets the requirements of section 5-12 of the specifications.

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Comments: (9-2-10) Text: 8-3.7.4 - Purpose - I recommend that language be added to the specification to state that it is not the purpose of the Dispute Review Board to consider case law, court rulings, or previous DRB rulings in their determinations. In the past, Contractor's have attempted to use these items in their positions which has resulted in confusion, delays in resolving issues, and more involvement in legal matters rather than actual conditions on the project.

Response: The DRB operating guidelines and Three Party Agreement are the locations for this information and are being reviewed/revised to address the changes to the DRB specs.

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