

0080308SDRB Prosecution of Work, Disputes Review Board
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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: Statewide Membership - Why would the requirements not be the same as specified in proposed specification 0080307DRB.

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

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Comments: (8-16-10) Prosecution and Progress – Disputes Review Board: General: There are several places within the correction where the term disputes is included versus claims. Rather than enter "disputes or claims" everywhere, I would suggest that you simply define the term "disputes" to include disagreements, claims, or similar. Consider that by differentiating claims your board's name should be changed to "Disputes and Claims Review Board." A question? If the DRB dispositions a dispute or claim, does that preclude either the plaintiff or the defendant from seeking legal restitution should either disagree with the boards decision? 0080307RDRB – 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. 0080307SDRB – Prosecution and Progress – Statewide Disputes Review Board See relevant comments above.

Response: Thanks for the comment but will leave the language as disputes or claims.

Regarding your question of seeking restitution should either party disagree with the recommendation, both parties are tasked with either accepting or rejecting the Board's recommendation. The taking of a dispute or claim to a DRB is a condition precedent to initiating any other action to seek restitution.

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.
