



Florida Department of Transportation

RICK SCOTT
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

STEPHANIE KOPELOUSOS
SECRETARY

January 6, 2011

Monica Gourdine
Program Operations Engineer
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Re: Office of Design, Specifications
Section 008
Proposed Specification: 0080308SDRB Prosecution and Progress – Statewide Disputes
Review Board.

Dear Ms. Gourdine:

We are submitting, for your approval, two copies of the above referenced Special Provision.

These changes were proposed by David Sadler to clarify the requirement that disputes brought before the Board must be duly preserved, to revise the compensation rate, and to establish a sharing arrangement for payment..

Please review and transmit your comments, if any, within two weeks. Comments should be sent via email to SP965RP or rudy.powell@dot.state.fl.us.

If you have any questions relating to this specification change, please call Rudy Powell, State Specifications Engineer at 414-4280.

Sincerely,

Rudy Powell, Jr., P.E.
State Specifications Engineer

RP/cah

Attachment

cc: Gregory Jones, Chief Civil Litigation
Florida Transportation Builders' Assoc.
State Construction Engineer

PROSECUTION OF WORK – STATEWIDE DISPUTES REVIEW BOARD.**(REV 6-23-0371-428-110)-(FA 8-1-03)-(1-10)**

ARTICLE 8-3 (Pages 81-83) is expanded by the following new Subarticle:

8-3.8 Statewide Disputes Review Board: For this Contract, a Statewide Disputes Review Board will be available to assist in the resolution of disputes and claims arising out of the administration and enforcement of a specification when such specification specifically refers disputes to this Board.

8-3.8.1 Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of the disputes *and claims* between the Contractor and the Department.

It is not intended that the Department or the Contractor 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 *and/or claims* without resorting to this alternative resolution procedure.

The Board will be used when normal Department-Contractor dispute *or claim* resolution is unsuccessful. Either the Department or the Contractor may refer a dispute *or claim* to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. *Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. Only disputes or claims that have been duly preserved under the terms of the eContract as determined by the Board will be eligible to be heard by the Board. Requests for equitable adjustment must be certified as required by 4-3.2. Claims that are referred to the Board must be in compliance with 5-12.* It is a condition of this Contract that the parties shall use the Statewide Disputes Review Board. ~~The Department's Claim Review Committee will not entertain any issues on this project.~~

The recommendations of the Board will be binding on both the Department and the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes *or claims* referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes *or claims*.

8-3.8.2 Membership: The Statewide Disputes Review 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.

Members on the Board will be pre-qualified as experts of the type of work being referred to this Board.

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.

After the Department has made final acceptance of the project, if disputes arise, the Statewide Disputes Review Board shall be activated to hear and rule on the disputed issue.

8-3.8.3 Procedure and Schedules for Disputes Resolution: Disputes *or claims* will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer resulting from the Engineer's evaluation of the guaranteed product or performance period, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

c. The Engineer's decision will be final and conclusive on the subject, unless the Contractor files a written appeal to the Engineer within 15 days of receiving the decision. Upon the Engineer's receipt of the Contractor's written appeal containing specific protest of all or part of the Engineer's decision, either the Department or the Contractor can refer the matter to the Board.

d. Upon receipt by the Board of a written duly preserved protest of a dispute *or claim*, either from the Department or the Contractor, it will first be decided when to conduct the hearing.

e. Either party furnishing any written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of 15 days prior to the date the Board sets to convene the hearing for the dispute *or claim*. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Department and/or Contractor will provide the requested information to the Board and to the other party.

f. The Contractor and the Department will each be afforded an opportunity to be heard by the Board and to offer evidence. Neither the Department nor the Contractor may present information at the hearing that was not previously distributed to both the Board and the other party.

g. The Board's recommendations for resolution of the dispute *or claim* will be given in writing to both the Department and the Contractor, within 15 days of completion of the hearings. The Board will focus its attention in the written report to matters of responsibility for repairs of guaranteed work or performance period as provided for by the Contract Documents.

8-3.8.4 Contractor Responsibility: The Contractor shall furnish to each Board member a set of all pertinent documents that are or may become necessary for the Board, except documents furnished by Department, to perform their function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates,

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or other documents which are used in the performance of the work or in justifying or substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Contractor will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

8-3.8.5 Department Responsibilities: Except for its participation in the Board's activities as provided in the construction Contract and in this Agreement, the Department will not solicit advice or consultation from the Board or any of its members on matters dealing in any way with the project, the conduct of the work or resolution of problems.

The Department shall furnish the following services and items:

a. Contract Related Documents: The Department shall furnish each Board member a copy of all Contract Documents, supplemental agreements, written instructions issued by the Department to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform their function. A copy of such pertinent documents must also be furnished to the Contractor.

b. Coordination and Services: The Department, in cooperation with the Contractor, will coordinate the operations of the Board. The Department, through the Project Engineer, will arrange or provide conference facilities at or near the Contract site and provide secretarial and copying services.

8-3.8.6 Basis of Payment: *A per hearing cost of \$8,000 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 for participation in the hearing while the remaining two members will receive \$2,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual ~~dispute~~-hearing. The Department will compensate the Contractor \$4,000 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at \$3,300 per day, ~~regular meeting rate~~, payment of which is equally split between the Department and the Contractor. 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 Statewide Disputes Review Board. This amount will be paid to the Contractor for each day of the Statewide Disputes Review Board. For each meeting, the Contractor shall compensate each Statewide 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. If an*

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~~issue or set of issues requires additional time in meeting or in analyzing the issues, additional compensation on a per day basis can be made, if authorized in advance by the Engineer.~~ Payment shall be made by issuing a work order against contingency funds set aside for this Contract.

~~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. ~~The Engineer in accordance with Department policy outside of this Contract shall make payment for non salary and non travel expenses and the Department's share of special services.~~

**PROSECUTION OF WORK – STATEWIDE DISPUTES REVIEW BOARD.
(REV 1-4-11)**

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The Board will be used when normal Department-Contractor dispute or claim resolution is unsuccessful. Either the Department or the Contractor may refer a dispute or claim to the Board. Referral to the Board should be initiated as soon as it appears that the normal dispute resolution effort is not succeeding. Referral to the Board is accomplished by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for entitlement to the dispute or claim. 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. Requests for equitable adjustment must be certified as required by 4-3.2. Claims that are referred to the Board must be in compliance with 5-12. It is a condition of this Contract that the parties shall use the Statewide Disputes Review Board.

The recommendations of the Board will be binding on both the Department and the Contractor.

The Board will fairly and impartially and without regard to how or by whom they may have been appointed, consider disputes or claims referred to it and will provide written recommendations to the Department and Contractor to assist in the resolution of these disputes or claims.

8-3.8.2 Membership: The Statewide Disputes Review 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.

Members on the Board will be pre-qualified as experts of the type of work being referred to this Board.

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.

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After the Department has made final acceptance of the project, if disputes arise, the Statewide Disputes Review Board shall be activated to hear and rule on the disputed issue.

8-3.8.3 Procedure and Schedules for Disputes Resolution: Disputes or claims will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by the Department and the Contractor and the time periods stated below may be shortened in order to hasten resolution.

a. If the Contractor objects to any decision, action or order of the Engineer resulting from the Engineer's evaluation of the guaranteed product or performance period, the Contractor may file a written protest with the Engineer, stating clearly and in detail the basis for the objection, within 15 days after the event.

b. The Engineer will consider the written protest and make his decision on the basis of the pertinent contract provisions, together with the facts and circumstances involved in the dispute. The Engineer's decision will be furnished in writing to the Contractor within 15 days after receipt of the Contractor's written protest.

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substantiating the Contractor's position. A copy of such pertinent documents must also be furnished to the Department.

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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.