

1 **(August 2, 2010)**  
2 **Appendix to the Special Provisions Disputes Review Board**  
3 ***Scope of Work***

4 The Scope of Work of the BOARD includes, but is not limited to, the following items of  
5 work:  
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7 **BOARD Consideration of Disputes or Claims:** Upon mutual request by the  
8 STATE and the CONTRACTOR to review a dispute, the BOARD shall convene to  
9 review and consider the issue. Both the STATE and the CONTRACTOR shall be  
10 given the opportunity to present evidence at these meetings. The time and location  
11 of BOARD meetings shall be determined jointly by the STATE, CONTRACTOR,  
12 and BOARD. It is expressly understood that the BOARD members are to act  
13 impartially and independently in the consideration of facts and conditions  
14 surrounding any dispute presented by the STATE or the CONTRACTOR and that  
15 the recommendations concerning any such dispute are advisory.  
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17 **Procedures:** Prior to any hearing involving a contract dispute, the BOARD will  
18 meet with the STATE and the CONTRACTOR to establish the rules and procedures  
19 which will govern the BOARD's participation in the Project as set forth in the  
20 Standard Specifications Section 1-09.11(1) and any modifications to that Standard  
21 Specification in the Special Provisions of the construction contract. In establishing  
22 the rules and procedures, the parties may consider the Suggested Administrative  
23 Procedures included in this Appendix. These Guidelines express in general terms  
24 the policy and concept for the operation of a board and are intended to supplement  
25 the Standard Specifications and any modifications to the Standard Specifications in  
26 the Special Provisions of the construction contract to the extent that no conflict with  
27 such provisions is created. The BOARD may establish any internal rules and  
28 procedures not covered in the AGREEMENT with the STATE and the  
29 CONTRACTOR.  
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31 **Furnishing Documents:** The STATE will furnish to the BOARD three copies of the  
32 contract and other documents, which are or may become pertinent to the activities  
33 of the BOARD. The CONTRACTOR shall furnish to the BOARD three sets of  
34 documents, which are or may become pertinent to the activities of the BOARD,  
35 except documents furnished by STATE.  
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37 **Construction Site Visits:** The BOARD members shall visit the project site to keep  
38 abreast of construction activities and to develop a familiarity of the work in  
39 progress. The frequency, exact time, and duration of these visits shall be as  
40 mutually agreed between the STATE, the CONTRACTOR, and the BOARD.  
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42 **Findings and Recommendations:** The BOARD's recommendations resulting  
43 from its consideration of a dispute shall be furnished in writing to the STATE and  
44 the CONTRACTOR. The recommendations shall be based on the construction  
45 contract provisions and the facts and circumstances involved in the dispute. In the  
46 event the BOARD's recommendations do not lead to resolution of the dispute, all  
47 BOARD records and written recommendations, including any minority reports, will  
48 be admissible as evidence in any subsequent litigation.  
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**Contractor Responsibility**

The CONTRACTOR shall furnish to each BOARD member, one copy of all pertinent documents which are or may become necessary for the BOARD to perform their function. Pertinent documents may include any drawings or sketches, calculations, procedures, schedules, estimates, or other documents which are created in the planning or the performance of the contract work. Copies of any documents provided to the BOARD must also be furnished to the STATE.

**State Responsibility**

The STATE shall furnish the following services and items:

- A. Contract-Related Documents: The STATE shall furnish the BOARD three copies of the contract documents, including change orders, written instructions issued by the STATE to the CONTRACTOR, or other documents pertinent to the performance of the contract, and therefore, necessary to the BOARD's work.
  
- B. Coordination and Services: The STATE's project engineer for the contract will, in cooperation with the CONTRACTOR, coordinate the operations of the BOARD. The STATE, through the project engineer, will arrange or provide conference facilities at or near the contract site and provide secretarial and copying services.

***Suggested Administrative Procedures***

**Objective**

The principal objective of the BOARD is to assist in the resolution of disputes, which would otherwise be submitted to litigation processes, and encourage the STATE and the CONTRACTOR to resolve issues at the lowest level possible. If this objective is achieved, such disputes can be resolved promptly, with minimum expense, and with minimum disruption to the administration and performance of the work. It is not intended for the STATE or the CONTRACTOR to default on their normal responsibility to amicably and fairly settle their differences by indiscriminately assigning them to the BOARD. It is intended that the mere existence of the BOARD will encourage the STATE and the CONTRACTOR to resolve potential disputes without resorting to this appeal procedure. But when a dispute which is serious enough to warrant the BOARD's review does develop, the machinery for prompt and efficient action will already be in place.

The BOARD, the STATE and the CONTRACTOR shall develop by agreement the BOARD's rules of operations and procedures to be followed for the PROJECT. In developing the agreement, the parties shall take into consideration their respective duties and responsibilities as set forth in their various agreements. Below are definitions of the responsibilities of the BOARD, and general guidelines which may be considered in developing the rules of operations and procedures for the BOARD. These guidelines express, in general terms, the policy for the creation and operation of the BOARD based on the STATE's Standard Specification 1-09.11(1), and any modification to that Standard Specification in the Special Provisions of the construction Contract.

**Responsibility of the BOARD**

The BOARD will render findings and recommendations on disputes between the

1 CONTRACTOR and the STATE arising from the construction contract. Primarily,  
2 the BOARD will consider claims and disputes involving interpretation of the Plans,  
3 Specifications, Special Provisions, delays, acceleration of the work, scheduling,  
4 classification of extra work, changed conditions, design changes, and the like.  
5 During its regular visits to the job site, the BOARD will encourage the settlement of  
6 differences at the job level.  
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8 The BOARD will refrain from officially giving any advice or consultative services to  
9 either party. The individual members will act in a completely independent manner  
10 and will have no consultative or business connections with either party, except for  
11 payments for services on the BOARD.  
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13 During routine meetings of the BOARD as well as during formal hearings, BOARD  
14 members should refrain from expressing opinions on the merits of statements on  
15 matters under dispute or potential dispute. Opinions of BOARD members  
16 expressed in private sessions should be kept strictly confidential.  
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18 Normally, the BOARD member selected by the first two as the Third Party Member  
19 will act as Chairman for all activities. However, this post may be delegated to  
20 another member from time to time.  
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### 22 **Regular Construction Progress Meetings**

23 All regular meetings are expected to be held at or near the job site. The frequency  
24 of regular meetings will be set by agreement of the BOARD, the STATE and the  
25 CONTRACTOR, consistent with the construction activities and the matters under  
26 consideration and dispute. Each meeting is expected to consist of a round table  
27 discussion and a field inspection of the work being performed on that contract. A  
28 member of the STATE's staff is expected to conduct the round table discussion,  
29 and the round table discussion attendees are expected to include selected  
30 personnel from the STATE and the CONTRACTOR. The agenda for each meeting  
31 will be set by the BOARD and may include the following elements in an order to be  
32 determined by the BOARD:  
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- 34 • Meeting opened by Chairman of the BOARD.
- 35 • Remarks by the STATE's representative.
- 36 • A description by the CONTRACTOR of work accomplished since the last  
37 meeting, the current status of the work schedule, and a forecast for the  
38 coming period.
- 39 • An outline, by the CONTRACTOR, of potential problems and a description  
40 of same.
- 41 • An outline, by the STATE's Project Engineer, of the status of the work from  
42 the STATE's point of view, including an assessment of potential problems  
43 and a description of same, if any, from the STATE's point of view.
- 44 • A brief description, by the CONTRACTOR or the STATE, of potential claims  
45 or disputes, which have surfaced since the last meeting.
- 46 • A summary, by the CONTRACTOR, the STATE or the BOARD, of the status  
47 of past disputes and claims.  
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49 The STATE will prepare minutes of all regular meetings and circulate them for  
50 revision and approval by all concerned.  
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The field inspection will cover all active segments of the work, the BOARD being accompanied by both STATE and CONTRACTOR personnel.

**Handling of Disputes**

When the BOARD receives a written notice of dispute as described in the Standard Specifications Section 1-09.11, and any modification to that Standard Specification in the Special Provisions of the construction Contract, it shall reach agreement with the parties on a time to conduct the hearings. The decision shall be tempered by the desires and needs of the STATE and the CONTRACTOR. If the matter is not urgent, it may be scheduled for the time of the next regular visitation to the project. For an urgent matter, the BOARD shall make every effort to meet at its earliest convenience.

The BOARD may also request that written documentation concerning the dispute be sent to each individual member for study before the hearing begins. A party furnishing any written documentation to the BOARD must furnish copies of such information to the other party before the hearing begins.

Normally, the hearings would be conducted at the job site. However, any location which would be more convenient and still provide all required facilities and access to the necessary documentation would be satisfactory. Private sessions of the BOARD may also be held at a location other than the job site.

For the hearings on disputes, the Third Party Member or one of the other members designated by the Third Party Member of the BOARD will act as Chairperson. The STATE and the CONTRACTOR will have a representative at all hearings. The claimant will discuss the dispute followed by the other party. Each party will then be allowed one or more rebuttals until all aspects are thoroughly covered. Each time a person testifies, the BOARD members may ask questions, seek clarification, or request further data. The BOARD may request from either party documents or information which would assist the BOARD in making its findings and recommendations, including, but not limited to, documents used by the CONTRACTOR in preparing the bid for this project. A refusal by a party to provide information requested by the BOARD may be considered by the BOARD in making its findings and recommendations. In large or complex issues, one or more additional hearings may be necessary in order to consider all the evidence presented by both parties.

During open hearings, no BOARD member should express an opinion concerning the merit of any facet of the dispute. By the same token, all BOARD deliberations should be conducted in private, with all interim individual views kept strictly confidential.

After the hearings are concluded, the BOARD shall meet in private and reach a conclusion supported by two or more members. Its findings and recommendations, together with its reasons shall then be submitted as a written report to both parties. The recommendations shall be based on the pertinent contract provisions and facts and circumstances involved in the dispute. The BOARD should make every effort to reach a unanimous decision. If this proves impossible, the dissenting member may prepare a minority report.

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After receiving the BOARD recommendations, the STATE and the CONTRACTOR shall respond to the other in writing signifying that the dispute is either resolved, or remains unresolved. Although both parties should place weight upon the BOARD's recommendations, they are not binding. However, if the BOARD's recommendations do not resolve the dispute, all records, and written recommendations, including any minority reports, may be admissible as evidence in any subsequent litigation. If the BOARD's assistance has not resolved the dispute, the CONTRACTOR must file a claim in accordance with the STATE's Standard Specification 1-09.11(2), Claims, before seeking judicial relief.

**Miscellaneous**

It is not desirable to adopt hard and fast rules for the functioning of the BOARD. The entire procedure is expected to be flexible enough to respond appropriately to changing situations. The BOARD should initiate, along with the STATE and CONTRACTOR's concurrence, new rules or modifications to old ones whenever this is deemed appropriate.