

Description of Process to Select A Disputes Review Board

The information below is to describe how a Disputes Review Board (DRB) is selected, and who holds and pays which contracts for various board members. Also described is what kind of input is needed from the state and contractor for the selection to be appropriate. It is assumed, in this description, that the State's construction contract requires that a DRB be established (outlined under Standard Specification 1.09.11(1), or in the GSPs of the contract).

Please note that if the process indicates a letter is needed, an email will not be an acceptable substitute. In the case of the request and approval letters between the State and the Contractor, the correspondence is official to the project, and should be on letterhead for each party.

Please also note that, even though one member is selected by the Contractor and one member by the State, the Board operates as an independent entity, and as an impartial body to hear and make reasoned recommendations on any disputes between the State and the Contractor. The Board is intended to work with all parties to create a collaborative team such that the project can be completed in a timely manner and, if possible, within budget, and without bias toward one party or the other.

Part 1 – Select Contractor's and State's Members

First, the Contractor and the State each select a member to propose to the other party. Whether the Contractor or State member is approved first is not important; this selection and contracting process can be concurrent. However, both members must be approved prior to the selection of the Third Party Member.

Contractor's Member

The Contractor may advertise for such services, or may select from persons he or she already knows that furnish these services. The Contractor will write a letter to the State's project engineer proposing their member, along with a resume.

The State should carefully consider the contractor's member, and contact that person to ensure there are no conflicts of interest issues or other issues, and that the member is appropriate for the project. If the State approves of the Contractor's selection, the State Project Engineer will write a letter back to the Contractor stating their approval. The State will send copies of both letters to the DRB Agreements Manager.

If the State does not approve of the Contractor's selection, the State Project Engineer will write a letter so indicating the decision to the Contractor. The Contractor then will propose another member. This process will continue until the State approves the Contractor's member. The State will send copies of all correspondence on this process to the DRB Agreements Manager.

It is noted that the Contractor will hold the agreement with the Contractor's member, and pay all invoices for that member.

State's Member

The State will select a member to propose to the Contractor from the current list of State DRB Members with whom the State has Task Order Agreements. The resumes are held by the DRB Agreements Manager at this time. To obtain the names of the members, the Project Engineer will contact the DRB Agreements Manager for the resumes.

When the State has reviewed the resumes and selected one or more names for the State's member, the State will contact the member(s) and interview them to ensure that the person they have selected is first, able to participate on the board, second, is appropriate for the particular project work which will be under the board's review, and third, does not have a known conflict of interest (i.e., has not worked for the state on this project before, and has not worked with the contractor in another capacity which would compromise their ability to be independent). After a member has been selected, the State will write a letter to the Contractor proposing that name, and include a copy of the resume.

If the Contractor approves of the State's choice, the Contractor will write a letter to the State's Project Engineer so stating. The State will send copies of all the correspondence to the DRB Agreements Manager.

If the Contractor does not approve the State's choice, then the State will need to select another person from the State's list, interview that member as above, and send a letter requesting approval. This will be done until the Contractor approves the State's selection, and the correspondence will be sent to the DRB Agreements Manager.

After the State's Member has been approved by the Contractor, and the correspondence is received, the DRB Agreements Manager will determine the initial cost of the State's member participation on the board and write a Task Order. The DRB Agreement Manager will send copies of the Task Order to the State's Project Engineer when the State's member is under contract.

It is noted that the State holds the agreement with the State's member, and will pay all invoices for that member.

Part 2 – Select the Third Party Member

Next, the Third Party Member needs to be selected.

After the DRB Agreements Manager receives the correspondence which indicates that a Contractor's member and a State's member have been selected, the DRB Agreements Manager will contact both members and request the selection of the Third Party Member. The two members will notify the DRB Agreements Manager when that selection has been made with the name of the person selected.

If the person is already on the list of members with which the State has currently open agreements, the DRB Agreements Manager will determine the initial cost of the Third

Party Member's participation on the Board, and write a Task Order. The DRB Agreements Manager will send copies of the Task Order to the State's Project Engineer when the Third Party Member is under contract. At this time, we are recommending to the state and contractor members that they select from our already approved list. However, we also want to ensure the third party member is appropriate for the project.

If the name of the Third Party is not on the list of members with State contracts, the DRB Agreements Manager will work with that person to obtain a contract for the services as well as obtain a resume from that person. After a Task Order agreement has been assembled and executed, the DRB Agreements Manager will develop a Task Order for that person's participation on the Board, and send copies of the Task Order to the State's Project Engineer.

It is noted that the State holds the agreement with the Third Party Member, and will pay the invoices for that member. However, after the invoice is approved and paid, the State project office will take half of the Third Party member's approved invoice amount and apply it as a credit to the state on the next progress payment request from the Contractor. It is noted that the funds which are deducted from the Contractor's progress payment do not get added back into the agreement with the Third Party member or into the work order which paid the member.

Loss of a Board Member

All contracts with Board members are single party contracts (i.e., they include only one person on the contract as a Board member). Should a Board member become unable to continue his or her duties on the Board for any reason, the selection process noted above will be used to select the appropriate replacement member for the Board. If it is a State member, then the State will propose a new member to the Contractor and the Board; if a Contractor's member, then the Contractor will propose a new member to the State and the Board. If it is a Third Party Member, the two remaining Board members will select the new member. The party who held the original contract, either State or Contractor, will write the new contract with the new member. All applicable correspondence, approval and contracting processes apply, as noted above.

The current DRB Agreements Manager is Meg Blau, 206-440-4685 or blaum@wsdot.wa.gov .