

**SAN FRANCISCO PUBLIC UTILITIES COMMISSION
INFRASTRUCTURE CONSTRUCTION
MANAGEMENT PROCEDURES**

**SECTION: SFPUC INFRASTRUCTURE
CONSTRUCTION MANAGEMENT**

APPROVED: 

PROCEDURE NO: 026

DATE: 6/7/2019

TITLE: DISPUTE REVIEW BOARD (DRB)

REVISION: 1

1.0 Policy

Dispute Review Boards are required for each Construction Contract with a value equal to or greater than \$200 million or for complex projects of a lesser value as determined by the Construction Management Bureau (CMB) Manager. For Contracts with a value equal to \$10 million to under \$200 million a Dispute Resolution Advisor (DRA) is required.

This SFPUC Infrastructure Construction Management (CM) Procedure applies to all personnel working on SFPUC Infrastructure Projects during construction to the extent that their work is affected by this CM Procedure and does not conflict with specific SFPUC policies or the Contract under which the Work is executed.

2.0 Description

This SFPUC Infrastructure CM Procedure establishes the requirements for establishing and operating a Dispute Review Board (DRB). When requested, the DRB will assist the City and Contractor by facilitating the timely resolution of disputes related to the performance of work.

3.0 Definitions

3.1 Dispute

A Dispute is a disagreement, related to the performance of the Work under the specified Contract between the City and the Contractor.

3.2 Dispute Review Board (DRB) Hearing

A DRB Hearing is a formal hearing before the DRB, initiated by either the RE or the Contractor, to review a dispute eligible for consideration under the Contract. The DRB Hearing results in a DRB Report.

3.3 Dispute Review Board (DRB)

The DRB is a three-member board, each of whom is signatory to the DRB Three-Party Agreement. The DRB consists of one member selected by the RE, one member selected by the Contractor, and a third member selected by the first two members. The third member acts as Chair for all DRB activities.

3.4 DRB Three-Party Agreement

The DRB Three-Party Agreement is an agreement, appended to Contract Specification Section 00 73 12, to which the individual DRB members, the RE, and the Contractor are parties and which establishes the DRB for the Project, consistent with the requirements of the Contract Documents.

3.5 DRB Membership Requirements

DRB Membership Requirements describe the professional experience and qualifications, criteria and limitations for membership along with the Canon of Ethics recommended by the Dispute Resolution Board Foundation (DRBF). The requirements are outlined in Contract Specification Section 00 73 12.

3.6 DRB Report

The DRB Report is a non-binding written recommendation issued by the DRB as a result of a DRB Hearing. DRB Reports are not admissible in subsequent litigation or other dispute resolution proceedings.

3.7 Parties Indirectly Involved

The construction managers, architects/engineers, sub-consultants, counsel, consultants, or subcontractors and suppliers of all tiers on the Project are considered "Parties Indirectly Involved".

4.0 Responsibilities

4.1 Resident Engineer (RE)

The RE manages and administers the project construction contracts and serves as the primary point of contact between the Contractor, the City and external stakeholders comprised of community residents, local government officials and agencies, schools, churches, businesses, and local community organizations, among others.

4.1.1 The RE nominates possible candidates for the DRB and selects one member to represent the RE. S/he prepares for and participates in the regularly scheduled DRB meetings.

4.2 Contractor

The Contractor is the entity awarded the Contract to perform the Work. The Contractor identifies possible nominees for DRB, and selects one

member to represent the Contractor. S/he prepares for and participates in the regularly scheduled DRB meetings.

4.3 DRB Panel Members

The DRB Panel Members are responsible for implementing the DRB process as outlined in Section 5.0. The process includes formulating rules of operation, regularly scheduling site visits, holding DRB Hearings as required, and issuing formal written reports.

5.0 Implementation

5.1 DRB Panel Selection Methods

5.1.1 **Method 1:** During the Mobilization Phase, the RE identifies potential DRB candidates from the SFPUC DRA/DRB Database and Resource/Contact List, based on professional experience, training and requirements in the Contract Documents (reference Contract Specification Section 00 73 12 and Attachment 026-1).

The RE meets with internal team members to review credentials and identify their selected nominee(s). It is advisable to interview nominee(s) to ensure clear understanding of the project and compatibility with internal team members.

- The RE provides the Contractor access to the Database and Resource/Contact List.
- The RE and Contractor may agree to each develop a list of possible nominees, rather than one, for consideration by the other party.

5.1.1.1 Within fifteen (15) calendar days of the Notice-to-Proceed (NTP) date, the RE and the Contractor exchange their respective DRB nominees' full name and contact information, resumes with applicable certifications, experience and qualifications, and disclosure statements.

5.1.1.2 Within thirty (30) calendar days after NTP, the DRB members mutually select a third member to serve as Chair and provide the information to the RE and the Contractor.

5.1.2 **Method 2:** As early as practicable, the RE and the Contractor meet to develop a risk profile for the project and based on this profile exchange nominee's resumes, experience and disclosure statements.

5.1.2.1 Within ten (10) days of the exchange, the RE and Contractor will meet and jointly select three DRB members. The RE and the Contractor will jointly select one member to serve as the Chair for all DRB activities.

5.2 DRB Meeting Protocol

- 5.2.1 The DRB Chair convenes the first DRB meeting, and the RE, the Contractor and DRB members execute the DRB Third-Party Agreement. The DRB formulates its own rules of operation, consistent with recommended DRBF operation guidelines.
- 5.2.2 On a quarterly basis, the DRB Chair schedules DRB Project site visits and meetings with the RE and Contractor representatives. The parties may select to meet more or less frequently depending on Project scope and duration, but not less than two times in a Project year.
 - 5.2.2.1 In advance of the DRB meetings, the Contractor provides the DRB and the RE with a current list of rejected Change Order Requests, rejected Requests for Deviations, Notices of Potential Claims, pending Claims, and other information such as schedules, or status reports.
 - 5.2.2.2 Each meeting consists of an informal discussion and a field observation of the work in progress. The DRB may issue verbal, nonbinding advisory opinions as to items discussed at the meeting. The RE and the Contractor shall attend the meeting and field observation.
- 5.2.3 Either party may initiate review of an eligible dispute by written notice to the DRB, copied concurrently to the other party. Prior to referring the dispute to the DRB, good faith negotiations must occur towards resolving differences between the RE and the Contractor, and the dispute must be rejected by the RE and the CMB Manager.

5.3 Yearly Review

- 5.3.1 If provided for in the Contract Documents, a yearly review of DRB member performance and participation shall be conducted by the City and Contractor to determine whether the continued services of individual DRB members are required. In the event that any or all DRB members are released from their duties, the Method 2 selection process as outlined in 5.1.2 and 5.1.2.1 shall be followed.

5.4 DRB Pre-Hearing

- 5.4.1 The RE and the Contractor shall each prepare a pre-hearing submittal and transmit it to all three members of the DRB and the other party.
- 5.4.2 If the pre-hearing submittal has not been prepared per the original schedule, the DRB may proceed with the Hearing or may reschedule it. In the event that some or all of the representatives of either party fail to appear at the appointed time of a DRB Hearing, the DRB will proceed with the Hearing.
- 5.4.3 Not less than thirty (30) calendar days prior to the due date for delivering the pre-hearing submittal, either party may request in

writing the use of outside experts. Upon receipt of this disclosure, the other party can secure outside expert services. The party securing outside expert services bears the costs of the services. The DRB can also secure outside experts, after receiving approval from the RE and the Contractor. Those costs are borne equally by the RE and the Contractor.

5.5 DRB Hearing

- 5.5.1 If the Contractor seeks a recommendation as to additional money under the Contract, and if the DRB issues a DRB Report finding entitlement, the RE may request a review or audit of the Contractor's project and accounting records within fifteen (15) calendar days of the DRB Report. The City selects and bears the cost of the individual or firm performing the review.
- 5.5.2 The DRB Chair convenes the Hearing and the RE and Contractor present respective positions to the DRB.

5.6 DRB Report

- 5.6.1 Upon conclusion of the DRB Hearing, the DRB meets in private to formulate its recommendations. Every effort is made to reach a unanimous recommendation. Within fourteen (14) calendar days of completion of the DRB Hearing, the DRB issues a formal written Report with recommendations for resolution of the dispute, signed by all DRB members.
- 5.6.2 Within ten (10) calendar days following receipt of the Report, either party may request clarification of the Report.
- 5.6.3 Within ten (10) calendar days following receipt of the Report, when new information is obtained or developed that was not known at the time of the Hearing, or when, in the party's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute, either party may request reconsideration of the Report.
- 5.6.4 Within thirty (30) calendar days of receipt of the Report or following receipt of responses to requests for clarification or reconsideration, the RE and the Contractor submit their written acceptance or rejection of the recommendation(s) contained in the Report concurrently to the other party and to the DRB.
- 5.6.5 If the parties are able to settle their dispute with the aid of the DRB Report, the RE and Contractor promptly accept and implement a settlement.

6.0 Other Procedural Requirements

6.1 Subsequent Proceedings

6.1.1 In the event that the Dispute Review Process does not result in a resolution of a dispute, the City or Contractor may pursue other contractual remedies.

6.1.2 In any subsequent litigation or similar proceeding arising out of a dispute heard by the DRB, the DRB Report and other DRB materials will not be admissible as evidence. Neither party may call a member of the DRB as a witness in any subsequent proceeding.

6.2 Review of Compensation

6.2.1 If the parties cannot agree on compensation within thirty (30) calendar days of the acceptance by both parties of the settlement, either party may request the DRB to make a recommendation regarding compensation.

6.2.2 If the Contractor seeks a recommendation from the DRB as to additional compensation under the Contract, the RE may request a review or audit of the Contractor's project and accounting records within fifteen (15) calendar days of the Contractor's request. The RE will select and bear the cost of the individual or firm performing the review or audit.

6.3 Compensation of the Dispute Review Board

Fees and expenses of all three DRB members are shared equally by the RE and the Contractor as set forth in the DRB Three-Party Agreement. The Contractor pays the DRB members' invoices after approval by both parties. The City, upon receipt of the invoices, reimburses the Contractor for 50% of such invoices, with no mark-up.

6.3.1 Standard hourly rates have been established. The CMB Manager will provide guidance to the RE.

7.0 References

7.1 Technical Specifications

Section 00 73 12 Dispute Review Board Specification

Section 00 73 12/A Dispute Review Board TPA

7.2 SFPUC Infrastructure CM Procedures

No. 025 Dispute Resolution Advisor

7.3 Others

None

8.0 Attachments

- 026 - 1 DRA/DRB Database, Resources and Contact - *SAMPLE*
- 026 - 2 DRB Three-Party Agreement
- 026 - 4 Revision Control Log

Attachment 026 - 1 DRA/DRB Database, Resources and Contacts – Sample

Dispute Resolution Advisor / Dispute Review Board List (AAA/Caltrans/DRBF/JAMS) - **SAMPLE**

Name	Brief Summary of Experience	Job/ Residence Travel	Telephone No.	E-mail	Resume	Comments
Allen, Lowell	10 years of experience DRBs CALTRANS construction projects.	Districts 1 through 4 and 10	(707) 443-3893	lcaeng@sbcglobal.net	<u>Yes</u>	DRA Trg. /Bridges
Anderson, Norman	DRB member/project neutral on 80+ projects in western USA. Served as either Contractor's or Agency's representative in dispute resolution. Heavy, Highway, Building Construction.	Anywhere in California	(360) 754-3819	normananderson@msn.com	<u>Yes</u>	DRA Trg. Lives in WA; Bay Bridge; primarily works on DOT projects; 3 combined sewer/tunnel projects; pump station. R
Baker, Bill	Civil Engineer: Arbitrator/Mediator in construction industry for nearly 40 years. DRB Member on 40+ projects, over 20 as Chair on Caltrans projects. Pipelines, seismic upgrade utility systems, tunnels, bridges.	Anywhere in California	(707) 942-5886	wbaker@napanet.net	<u>Yes</u>	DRBF, DRA Trg., AAA; PUC ok; \$325/hr.: R
Bauer, Carl F.	50 years' experience in Construction Industry, including 30 in executive positions. Served on 26 DRBs, 6 as Chairman. Active in ACG, Beavers; Heavy, Highway, Building Construction.	Anywhere in California	(916) 944-2843	c.bauer@sbcglobal.net	<u>Yes</u>	DRBF, DRA Trg.
Carlson, William	DRBF: 30+ years in heavy, highway, marine and building construction.	Escondido, CA	(760) 751-2081; cell: (760) 715-1376	wjccal@aol.com	<u>Yes</u>	DRA Trg. R
Dooley David	Attorney, Construction Law, Arbitrator for AAA, DGS, PWCAC.	Lives in Mill Valley	(415) 383-0741			DRB /DRA Trg.
Graham, Bob	42 years of experience in design, construction, traffic, engineering, and building construction, 37 years with Caltrans, 5 years with Bechtel – Service on 7 DRBs.	Anywhere in California	(650) 967-9115	grahamre@comcast.net	<u>Yes</u>	DRB Trg. R DRB member on storm water treatment system
Lewis, Richard	32 years with Granite Const., including 3 Design-Build highway, dam and lock projects. Served on 23 DRBs, 12 as Chair on public works projects for 7 agencies.	Lives in Escondido may not want to travel to No. CA	(760) 839-0859	dicklewis1@cox.net	<u>Yes</u>	DRB Ch 12 projects. Design Build projects
Madewell, Charles	No experience. DRBF: Licensed Civil Engineer; 40 years of experience in structures, heavy civil, industrial as a contractor and owner's representative. Dillingham Construction Specialties: water and wastewater treatment facilities, underground pipelines, water dams, other.	Lives in Danville, CA	(925) 216-3429	cjmadewell@sbcglobal.net	<u>Yes</u>	DRB Chair Trg.: no DRB exp. R
Reading, Ron	40 years progressive experience in heavy civil engineering construction with an extensive background in project management.	Anywhere in California	(925) 820-9131	r-mreading@msn.com	<u>Yes</u>	DRA Trg.
Thomas, Hugh	Involved with construction contract dispute resolution since 1977. Served on 55 DRBs, Chair for 20 of the DRBs. Primary experience Caltrans.	Anywhere in California	(530) 673-9788	thomashu@comcast.net	<u>Yes</u>	DRB/DRA and Chair Trg. R
<p>Note: Updated 12/23/08. R: Responded to SFPUC / CMB Survey. Sources: Dispute Resolution Board Foundation (DRBF), Caltrans, American Arbitration Association (AAA), JAMS and Contractor Associations (AGC, EUCA).</p>						

Attachment 019 - 2
Page 1 of 2
DRB Three-Party Agreement, Division 00
Specification Section 00 73 12/A

SAN FRANCISCO PUBLIC UTILITIES COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

DISPUTE REVIEW BOARD
THREE-PARTY AGREEMENT

THIS AGREEMENT, dated for convenience as of the _____ day of _____, 20____, is between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "PUC"), _____ (the "Contractor"), and the following individual: _____ (the "DRB").

Recitals

- A. The City, by and through its PUC, has awarded to the Contractor public work Contract No. _____ (the "Contract") for the construction of a public work known as _____ (the "Project").
- B. Included as part of the Contract is Document 00 73 12/DRB, implementing a Dispute Resolution Advisor procedure for the Project (the "DRB Specification").
- C. The DRA has been selected in conformance with the DRB Specification.

Agreement

NOW THEREFORE, the City, the Contractor, and the DRB hereby agree as follows:

- 1. **Compliance with Specification.** The DRB agrees to be bound by the terms of the DRB Specification and to perform the required duties strictly as set forth in the DRB Specification. The DRB Specification is incorporated herein by reference as if fully set forth.
- 2. **Compensation.** The City and the Contractor agree that the DRB shall be compensated for his/her individual Services as DRB at a billing rate of \$_____ per hour. Compensation shall be paid at the stated billing rate, applied to travel time and reasonable study/consultation time, time spent in Dispute Meetings, and preparation of any written Report as set forth in the DRB Specification. Included in the billable rate shall be routine office expenses, such as secretarial, administrative, report preparation, telephone, computer, and internet connections.
- 3. **Additional Compensation.** Not included in the billable rate, and considered additional compensation, shall be any travel expenses, outside reproduction costs, and postage costs. Travel expenses must be approved in writing by both the City and the Contractor prior to being incurred. Outside reproduction and postage expenses for DRB Reports and other written communications may be billed at cost.
- 4. **Invoices.** The DRB shall submit to the Contractor invoices for work completed (a) not more often than once per month; (b) based on the agreed billing rate and conditions and on the number of hours expended, together with direct, non-salary expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts; and (c) accompanied by a description of activities performed daily during the invoice period.
- 5. **Confidentiality.** The DRB shall not divulge any information acquired during DRA activities without obtaining prior written approval from the City and the Contractor.
- 6. **Recordkeeping.** The DRB shall maintain cost records pertaining to this Agreement for inspection by the City or the Contractor for a period of three years following the end or termination of this Agreement.

SFPUC

00 73 12/A DRB/TPA – 1

Dispute Review Board Specification

Attachment 026 - 2
Page 2 of 2
DRB Three-Party Agreement, Division 00
Specification Section 00 73 12/A

7. **Assignment.** No party to this Agreement shall assign any duty established under this Agreement or the DRB Specification.
8. **Termination.** This Agreement may be terminated by mutual agreement of the City and the Contractor at any time upon not less than 10 days written notice to the DRB. The DRB may be terminated only by agreement of both the City and Contractor. If the DRB resigns, is unable to serve or is terminated, he/she will be replaced within four weeks in the same manner as he/she was originally selected under the DRB Specification. This Agreement shall be amended to indicate the member replacement.
9. **Legal Relations.** The parties to this Agreement expressly acknowledge that the DRB, in the performance of his or her duties under this Agreement and the DRB Specification, is acting in the capacity of an independent agent and not as an employee of the City or the Contractor. The DRB shall not participate in any subsequent dispute proceedings relating to the Contract or the Project. The City and Contractor release the DRB from any and all liability, claims, demands, actions and causes of action arising out of or resulting from the findings and recommendations of the DRB. The release set forth above excludes any and all liability, claims, demands, actions and causes of action arising out of or resulting from fraud or willful misconduct by the DRB.
10. **Jurisdiction and Venue.** Disputes among the City, the Contractor, and the DRB arising out of this Agreement shall be brought in the California Superior Court, County of San Francisco. The Agreement shall be interpreted in accordance with the laws of the State of California. The DRB hereby consent to the personal jurisdiction of the California Superior Court, County of San Francisco.
11. **Funding Agency Review.** The _____ [Agency funding the project] has the right to review the work of the DRB in progress, except for private meetings or deliberations of the DRB.

CITY AND COUNTY OF SAN FRANCISCO
PUBLIC UTILITIES COMMISSION

[CONTRACTOR]

BY: _____
Name:
Title:

BY: _____
Name:
Title:

DRB

BY: _____

Approved as to form:
DENNIS J. HERRERA
City Attorney

BY: _____
Deputy City Attorney

SFPUC

00 73 12/A DRB/TPA – 1

Dispute Review Board Specification

**Attachment 026 - 3
Revision Control Log**

Revision No.	Revision Date	What changed?
Rev 1	<enter date>	<ul style="list-style-type: none">• Minor format changes;• Attachments revised;• Revision Control Log updated.
Rev 0	11/14/16	Signed