Disputes Review Boards

WSDOT
DRB Practices and Experiences

AASHTO SOC Summer 2008
What is a Dispute Review Board (DRB)
Purpose
Membership selection
Cost
DRB recommendations
Training
Case studies (The Good, Bad and Ugly)
Results
What is a DRB?

- DRB Foundation definition;
  - A board of impartial professionals formed at the beginning of the project to follow construction progress, encourage dispute avoidance, and assist in the resolution of disputes for the duration of the project.
How BOARDs are Being Used

- WSDOT, DRBs are used on projects over 10 million dollars, exceptions are allowed
WSDOT selects members from an on call list developed based on experience/training.
WSDOT, Each party pays for their member and they share the third party member/chair expense, payment is generally by the hour plus expenses.
Qualifying Issues

- WSDOT generally will use DRB to:
  - Determine only entitlement
  - On issues related to contract interpretation
  - Of a significant value
WSDOT provides specific HQ guidance whenever an issue is presented to the DRB. Just in time training and rehearsing the presentation is typical preparation.
The Good
Lump sum item, Excavation Class A, includes designing, furnishing, installing, maintaining, and removing a shoring wall to maintain traffic on adjacent lanes of roadway.

After installation of the shoring wall and excavation for the first half of the arch culvert, a portion of the shoring wall failed. As a result of the failure, the contractor has incurred extra costs and delays.
Entitlement?

No
The Bad
Issue Description

This dispute is over payment and time for construction of the Reinforced Concrete Retaining Wingwall(s) Type 1 and Cutoff Wall(s) constructed at the Deer Creek Culvert.
Entitlement?

Yes
The Ugly
Lewis and Clark Bridge
Painting Project
Lewis and Clark Bridge

Kelso, Washington
The Contract

- Engineer’s Estimate $13.6 million
- Prime’s bid amount $14.6 million
- 17 bid items, “simple” job, no DRB
- Cleaning and Painting – Lump sum
- Cleaning and preparation 5,000 psi
Differing site condition

- Proper candidate for overcoating?
- More coating removed from 5,000 psi wash
- More primer, feathering, and dust collection
- $11.8 million to $26.7 million issue
Contract termination

- WSDOT and ASI agreed to terminate contract
Entitlement?

Yes?
Statistics

- WSDOT
  - Number per year
  - Win/loss ratio
  - Formal/informal
  - Binding/non-binding
  - Acceptance rate/owner
  - Acceptance rate/contractor
FDOT’s Turn
How BOARDs are Being Used

- FDOT, DRBs are available for every project. FDOT also utilizes Regional Boards, and a Statewide BOARD.
Membership Selection

- FDOT requires training offered by the DRB Foundation. Selection requires this training coupled with experience.
FDOT pays full cost of BOARD, compensation is $1,100/member/day of hearing.
FDOT allows issues of entitlement and quantum to be heard by Boards. First the board would determine entitlement. If resolution of quantum could not be reached, the BOARD could hear quantum.
FDOT, developed a DRB training course through the University of Florida on how to prepare and present positions to the BOARD.
The Good
Issue Description
The Bad
Entitlement?
Statistics

- FDOT
  - Number per year
  - Win/loss ratio
  - Formal/informal
  - Binding/non-binding
  - Acceptance rate/owner
  - Acceptance rate/contractor
General DRB Foundation

- http://www.drb.org/index.htm

WSDOT links

- http://www.wsdot.wa.gov/biz/construction/Staff.cfm

FDOT links to DRB information:

- http://www.dot.state.fl.us/construction/CONSTADM/CONSTRUC.htm
Discussion??
Questions???