FDOT Use of Disputes Review Boards

AASHTO SOC Summer 2008
Topic Areas

- How BOARDs are being used
- Costs of BOARDs
- Membership selection
- Training
- BOARD recommendations
  - Entitlement
  - Quantum
  - Binding
- The Good, the Bad, the Ugly
How BOARDs are Being Used

- FDOT began use of DRBs in 1994
- Expanded to use of Regional Boards 2002
- FDOT added use of Statewide BOARD in 2004
- FDOT uses DRBs on, or makes available to, EVERY CONSTRUCTION PROJECT
How BOARDs are Being Used

- Project Specific DRB is used on all contracts over $15 Million dollars

- The District Construction Offices have authority to add Project Specific DRB if a project is complex or if it considers the project to have a higher than normal probability of issues

- Meeting frequency - generally monthly
How BOARDs are Being Used

- Regional DRBs are available for use on projects without project specific DRB

- Statewide DRB used to hear issues related to warranties or materials performance after Final Acceptance of the construction project – used on nearly all projects

- Meeting frequency - as needed
How BOARDs are Being Used

Historically:

- DRB on more than 600 projects
- BOARDs have used close to 150 different members
- BOARDs have served on projects totally more than $10 Billion
- FDOT has a slight favorable edge in recommendations with 54% for FDOT and 46% for contractors
Historically:

- Most issues resolved before become a dispute
- Most disputes are resolved before they go to a DRB
- For those disputes that do go to DRB, most are accepted with BOARD recommendation
How BOARDS are Being Used

DRB Hearing Disputes by Category 1996 - 2006

- Design Errors: 7%
- Rework: 6%
- Differing Site Conditions: 27%
- General Contract Interpretation: 24%
- Pay Items and Quantities: 21%
- Other Issues: 14%
Cost of BOARDS

- FDOT pays full cost of BOARD for all jobs. Compensation is $1,100/member/day of hearing.

- FDOT will also compensation BOARD members at same daily rate for meetings held to discuss/review project issues provided the meetings are pre-approved by FDOT.
Membership Selection

- FDOT requires persons wanting to be qualified as a DRB member to complete member training offered by the Disputes Review Board Foundation

- This training coupled with experience in construction is what it takes to become a candidate
Membership Selection

Available Candidate Members

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>CITY/ZIP</th>
<th>PHONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adderley, Allan</td>
<td>3450 Neff Lake Road</td>
<td>Brooksville, FL</td>
<td>34602</td>
</tr>
<tr>
<td>Allen, Jr. James</td>
<td>5620 Lake Point Drive</td>
<td>Lakeland, FL</td>
<td>33813</td>
</tr>
<tr>
<td>Apolitakis, John</td>
<td>P.O. Box 1292</td>
<td>Millbrae, CA</td>
<td>94030</td>
</tr>
<tr>
<td>Armstrong, Harvey</td>
<td>339 Sanford Avenue</td>
<td>Longwood, FL</td>
<td>32750</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Membership Selection

- FDOT - Membership selection does not mean the member would perform as an advocate for the party by whom it was selected.

- The contractor and FDOT selected members choose a third candidate that is subject to the approval of both the contractor and FDOT. That third candidate then acts as Chairperson.
Membership Selection

- Regional DRBs are established by as a pool of five available members that can be used to hear issues arising on jobs that do not have project specific DRB.

- The President of the Florida Transportation Builders Association (FTBA) and FDOT Director, Office of Construction select pool members for a one year term – can be extended.
**Membership Selection**

<table>
<thead>
<tr>
<th>FDOT/FTBA Regional Dispute Review Boards</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>District 1:</strong></td>
<td><strong>District 2:</strong></td>
</tr>
<tr>
<td>1. James Guyer - Chairman</td>
<td>1. Bobby Buser - Chairman</td>
</tr>
<tr>
<td>(813) 836-4353; <a href="mailto:iguyer@tampabay.rr.com">iguyer@tampabay.rr.com</a></td>
<td>(407) 647-7275; <a href="mailto:rs10171@netzero.com">rs10171@netzero.com</a></td>
</tr>
<tr>
<td>2. Bob Lindquist</td>
<td>2. Bill Downs</td>
</tr>
<tr>
<td>3. George Seel</td>
<td>3. Peter Markham</td>
</tr>
<tr>
<td>4. Carson Carner</td>
<td>4. Ralph Ellis</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>District 3:</strong></th>
<th>**District 4 &amp; 6 &amp; Turnpike S. of Indian River County</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bill Waddell – Chairman</td>
<td>1. Frank Proch - Chairman</td>
<td></td>
</tr>
<tr>
<td>(850) 875-4822; <a href="mailto:bwaddell539@yahoo.com">bwaddell539@yahoo.com</a></td>
<td>(352) 583-4824; <a href="mailto:fproch@aol.com">fproch@aol.com</a></td>
<td></td>
</tr>
<tr>
<td>2. Bill Doyc</td>
<td>2. Joe Capeletti</td>
<td></td>
</tr>
<tr>
<td>5. Frank Proch</td>
<td>5. Jack Nutbrown</td>
<td></td>
</tr>
<tr>
<td>6. Lou Songer</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>District 7:</strong></th>
<th><strong>Districts 5 &amp; Turnpike, Indian River County North:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Jack Norton - Chairman</td>
<td>1. George Seel - Chairman</td>
</tr>
<tr>
<td>(813) 855-5211; <a href="mailto:jnorton986@aol.com">jnorton986@aol.com</a></td>
<td>(407) 647-6504; <a href="mailto:gseel@aol.com">gseel@aol.com</a></td>
</tr>
<tr>
<td>2. Lester Furney</td>
<td>2. Mike Bone</td>
</tr>
<tr>
<td>4. Keith Richardson</td>
<td>4. Peter Markham</td>
</tr>
<tr>
<td>5. Mick Jameson</td>
<td>5. Ralph Ellis</td>
</tr>
</tbody>
</table>
After members are selected for project specific BOARDs, the FDOT, Contractor, and BOARD members execute a Three Party Agreement.

The TPA addresses the description and scope of the work of the BOARD; and Contractor, FDOT, and BOARD responsibilities.
FDOT, in addition to DRBF member training requirement, developed through the University of Florida a DRB training course for industry on how to prepare and present positions to the BOARD.

This training is available to FDOT employees, Contractors, and Consultants.
FDOT allows issues of entitlement and quantum to be heard by BOARDs. First would be entitlement after which FDOT would try to resolve issue if entitlement found in favor of contractor. If resolution could not be reached, BOARD could hear quantum.
**BOARD Recommendations**

- FDOT DRB recommendations are non-binding:
  - except for issues related to Bonuses brought to BOARD on Bonus or Incentive/Disincentive projects or
  - warranty/material performance issues brought to Statewide DRB
Taking of issues to a DRB are a condition precedent to taking the issue to Arbitration or a claim to court.
BOARD Recommendations

- FDOT posts hearing recommendations on its State Construction Office Website
In general terms, FDOT considers a ruling to be a good one if the BOARD has made its recommendation based on the terms of the contract, regardless of whether it rules for or against the FDOT.

The BAD recommendations are those where the BOARD has ruled outside of the contract – often met with rejection of ruling.
The Good, the Bad, the Ugly

- Issue on project brought before BOARD was entitlement to increased materials cost due to unavailability of base material and time extension for delays.
- FDOT contracts are written to allow contractors to choose the base option it intends to use – hence availability issues rest with the contractor.
- BOARD found no contractor entitlement.
The contractor requested approximately $600,000 for repairs to the asphalt and base.
The Good, **the Bad, the Ugly**

- Another example of base and pavement failures
The Good, the Bad, the Ugly

- Issue was contractor asserted that the design was faulty and resulted in water trapped in the subgrade and base because the adjacent properties were higher elevation than roadway.
- DRB recommendation was that neither party proved its case so recommended splitting the costs.
- FDOT rejected the recommendation.
Future DRB use

- FDOT is committed to the DRB process
- FDOT looking to develop a search tool that will allow user to review all of the recommendations by subject, name, etc.
- FDOT considering developing a member evaluation process
Weblinks to Information

- FDOT links to DRB information:
  http://www.dot.state.fl.us/construction/CONSTADM/CONSTRUC.htm
Questions???