



American Arbitration Association

*Dispute Resolution Services Worldwide*

## AAA Dispute Resolution Board Hearing RULES AND PROCEDURES Effective December 1, 2000

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### 1.0 Defined Terms

For the purposes of these Rules, terms not otherwise defined herein shall have the same meanings as assigned to them in the (Contract Name) Contract, Contract (Contract #), unless the context clearly requires otherwise.

### 2.0 General Authority of the Dispute Resolution Board (DRB)

Pursuant to the Contract, Subsection \_\_\_\_\_, the DRB will implement these Hearing Rules and Procedures in a manner to make the hearing informal, efficient, and expeditious. The DRB, however, will retain the authority to conduct the hearing as it deems most appropriate, consistent with the Contract.

### 3.0 Role of Chair

The Chair will be responsible for directing the course of the hearing and for keeping the official records of the hearing.

### 4.0 Scheduling of Hearing

Within seven (7) days receipt of the Response to Request for Board Review or Response to Counterclaim, whichever comes later, the Chair will, in accordance with Specification 1.04.D.1., establish and AAA will notify the Owner and Contractor of the dates for any additional pre-hearing submissions and the hearing date. Except in circumstances that require immediate action, the hearing will be scheduled during a regularly scheduled site visit.

### 5.0 Hearing Location

To the extent practicable, any Dispute Resolution Board (DRB) hearing will be conducted at the job site.

### 6.0 Preliminary Conference

In large or complex Disputes, the Dispute Resolution Board (DRB) may request that the affected parties participate in a telephone or in-person preliminary conference with the DRB. At the preliminary conference, the DRB shall provide the parties with organizational instructions and inform them of any issues that the DRB would

like to have addressed at the hearing. The DRB may also address issues such as bifurcation of the merit and amount elements of the Dispute, the desired order of presentation of the parties' positions, the persons who may need to be present at the hearing, and any other matters that would promote the efficient and expeditious processing of the Dispute.

## 7.0 Exchange/Submission of Documents and Exhibits

The DRB may require the parties to produce documents at or before any hearing. At least 14 days prior to the scheduled hearing date, the DRB will notify the parties in writing of any documents that may be required to be produced for the hearing.

At least ten (10) days prior to a scheduled hearing date, the parties shall exchange and simultaneously submit to the DRB a list of each document or exhibit that each party intends to submit, use, or refer to in its presentation at the hearing. Each party shall include with the list a copy of each document or exhibit not included in prior submissions to the DRB.

- a. The parties are encouraged to submit exhibits, charts, or summaries of documents in order to facilitate the DRB's understanding of the issues in the Dispute and to avoid the submission of voluminous records that may not be necessary for the DRB's determination. At least ten (10) days prior to a scheduled meeting date, such documents also shall be exchanged with all other parties to the Dispute and submitted to the DRB.

## 8.0 Preparation for Dispute Resolution Board Hearing

1. The Parties will prepare individual, stand alone statements of position describing the dispute, the Party's position, the contractual justification for that position, and any reference material. Following are suggested guidelines for statements of position and related documentation.
  - a. The Parties should attempt to agree to a simple statement of the dispute, typically limited to one paragraph.
  - b. The statement of position should be structured to be a stand alone document that clearly states the dispute, states the claim amount in time and in dollars if a quantum dispute, states the Party's position in entitlement disputes, clearly defines the contractual justification for the stated position in entitlement disputes, clearly defines the contractual justification for the stated position and the reasoning as to why the other Party's position is not contractually correct and appropriate, including all necessary exhibits referred to in the statement of position and in the planned hearing testimony.
  - c. The Parties should stipulate to as many facts, dates and quantities as possible and include this stipulation in their statement of position.
  - d. The Parties should present their entitlement position in the dispute, with specific references to appropriate contractual documents that support their position and include copies of those documents in the statement of position.
  - e. If quantum is to be considered in the same dispute meeting, the Parties should present their quantum position in the dispute case with specific analysis of the comparative cost, productivity, or timeliness issue.
  - f. The Parties should not send to the DRB or to each other any further exhibits or correspondence regarding the dispute, without the prior approval of the DRB, between the time the statement of position has been sent out and the hearing.
  - g. The statement of position should be hand-delivered to the other party and mailed, overnight mail, no acceptance signature required to deliver, to the DRB members 14 days prior to the established meeting date.
  - h. These guidelines are subject to change to fit the circumstances of a particular dispute.

## 9.0 Evidence/Burden of Proof

The DRB will not be bound by the judicial rules of evidence or burden of proof. The DRB may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant or when it determines it has sufficient understanding of the facts underlying a claim or defense to make its recommendations.

## 10.0 Presentation of Dispute

Each party shall make an initial presentation of its position with respect to the Dispute or defense and one or more rebuttals to any assertion by another party, until the DRB determines that all aspects of the Dispute have been addressed adequately. The DRB may limit the presentation of documents or oral statements when it considers them to be irrelevant or redundant. The DRB members shall control the hearing and guide the discussions of issues by asking questions of the parties in order to obtain expeditiously all information the DRB considers necessary to make its recommendations. The DRB may permit the questioning of one party by another party only if it would facilitate the presentation or clarification of an issue in the Dispute.

## 11.0 Representatives Required to be Present at Meetings

Authorized representatives of the Owner and Contractor shall attend the hearing. Except as provided in Section 11.0 hereunder, no other person may attend the hearing, except with permission of the DRB granted after hearing the objections of all participating parties.

At least ten (10) days prior to a scheduled hearing date, the parties shall exchange and submit simultaneously to the DRB a list of their respective witnesses and representatives planning to attend the meeting. The list should contain the following information: the person's name, title, professional affiliation, and a brief summary of the

matters that the person will address.

## 12.0 Participation of Counsel and Independent Experts

If a party intends to be accompanied at the hearing by counsel or by an independent expert, such party shall notify all other parties in writing at least ten (10) Days prior to the scheduled hearing date and shall include such person on the list required by Rule 10.0. If a party has not notified the others within the appropriate time period that it intends to be accompanied by counsel or by an independent expert, but receives another party's notice that it will be so accompanied, the recipient party may then elect to be accompanied by counsel or independent expert if it notifies the other parties and the DRB, in writing, at least five (5) days prior to the scheduled meeting date.

Unless the DRB determines that it would assist resolution of the Dispute, counsel may not (a) examine directly or by cross-examination any witness, (b) object to questions or factual statements made or related during the meeting, and (c) make motions or offer arguments.

## 13.0 Consolidation/Bifurcation of Disputes

The DRB will notify all affected parties in writing if it decides to consolidate Disputes arising out of the same circumstances or involving similar factual or legal issues, or if it decides to bifurcate a Dispute into, first, a determination as to merit and, second, if necessary, a determination as to amount. The parties shall conform their submission of documents and presentations at the hearing to be consistent with such consolidation or bifurcation as determined and instructed by the DRB.

Alternatively, the DRB may decide to issue recommendations as to merit only and request that the parties attempt to determine the amount. If the parties cannot do so, the DRB may schedule further meetings to address any unresolved issues by means of further recommendations.

## 14.0 Disputes involving Subcontractor Claims

The Contractor shall identify clearly in all submissions, each portion of the Dispute that involves a Subcontractor Claim and the identity of the related Subcontractor. The Contractor also shall ensure that all documents required by these Rules and Procedures are timely submitted to the DRB.

At any DRB meeting on a Dispute that includes one or more Subcontractor Claims, the Contractor shall require that an authorized representative of each Subcontractor that is involved in the Dispute with direct and actual knowledge of the facts underlying the Subcontractor claim attend to assist in presenting the Subcontractor claim and to answer questions raised by the DRB members or the Owner's representatives.

## 15.0 Failure to Comply with Meeting Rules and Procedures

A party's failure to comply with the DRB's Meeting Rules and Procedures and other requirements, or use of such rules to obstruct the process, may be considered by the DRB in making its recommendations.

## 16.0 DRB Deliberations

After the close of hearing on a Dispute, the DRB will meet to formulate recommendations for resolution of the Dispute. All DRB deliberations will be conducted in private and will be confidential.

## 17.0 Issuance of Recommendations

Within 14 days after the close of the hearing, the DRB recommendation will be forwarded to the Owner and the Contractor by the AAA.

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