

Sample DRT Procedures and Guidelines

Contract _____
Project Description _____

DISPUTE REVIEW TEAM (DRT) Procedures and Guidelines

Pursuant to **Section IV. Scope of Work, Subsection B. Establish Procedures (1) of the Dispute Review Team (DRT) Three-Party Agreement** the DRT Members present to the Department and Contractor a Procedures and Guidelines draft for review and approval.

The intent of this document is to identify appropriate procedures and guidelines based on the Contract Documents, the Dispute Review Team (DRT) Three-Party Agreement and current good practice in dispute review processes that will work together to assist the Dispute Review Team in resolving Disputes.

There are minor duplications between this Procedures and Guidelines document and the Dispute Review Team (DRT) Three-Party Agreement.

A. GENERAL

1. The Department and Contractor (Parties) shall not default in their responsibility to amicably and fairly resolve issues by indiscriminately assigning disputes to the DRT members.
2. The DRT members may request assurance from the Parties that bilateral negotiations have occurred prior to referring a dispute to the DRT.
3. The intent is the DRT be utilized only after it has been determined that the dispute cannot be resolved utilizing the Partnering Dispute Resolution process.
4. The function and effect of the DRT is not to be considered a legal process such as arbitration or mediation.

B. RESPONSIBILITY OF THE DRT

1. The DRT members are not to act as a representative or an advocate of the party who appointed them. DRT members will act impartially and independently in all their actions.
2. The DRT members will use their acknowledged technical expertise in engineering and construction to assist the Parties in the prevention and resolution of issues.
3. The DRT members shall become familiar with the Contract Documents, review periodic reports supplied by either of the Parties and maintain current files.

4. Except for providing the services required in the Agreement, the DRT and its individual members shall refrain from giving any advice to either party concerning conduct of the work or the resolution of problems.

C. COMMUNICATIONS

1. Schedules and arrangements for regularly scheduled Progress Meeting and Dispute Meetings will be coordinated by the DRT chairman with one representative for the Department and one representative for the Contractor.
2. Except for the above communication, there shall be no ex-parte communications between the chairman and DRT members with either of the Parties or any other entities involved in the construction contract.
3. Position Papers, correspondence, reports, agenda and other documents shall be sent directly to each DRT member and the Parties.

D. REGULAR DRT PROGRESS MEETINGS

1. At each DRT Meeting the two ensuing meetings will be scheduled. The DRT members and the Parties shall do everything possible to maintain the meeting schedule and avoid the cancellation of any scheduled meetings.
2. A proposed agenda will be prepared approximately 30 days before the meeting by the DRT chairman and circulated to the DRT and representative of each of the Parties for their review and suggestions
3. Approximately 7 days before the meeting the DRT chairman will send to the DRT and the representative of each Party the expected agenda and details about meeting arrangements and travel itineraries.
4. The agenda will provide the opportunity for the Parties to present in a round table format the status of the work, the status of current issues, their concern about other possible issues, and the status of the ongoing partnering effort.
5. The agenda will provide sufficient time for the DRT, both Parties and other key subcontractors and suppliers at the Party's discretion, to view all stages of the work. The DRT members require that they be accompanied on all site visits by representatives of both Parties.
6. The DRT and the Parties at the first meeting will address and agree on the need for minutes or meeting notes of the Progress Meetings and if so, who and how they will be prepared.

E. PROCEDURE FOR DISPUTE RESOLUTION

1. Either of the Parties may request a dispute be heard by the DRT. Such request may be made as soon as it appears that the partnering dispute resolution process is not succeeding.

2. Disputes shall be considered as soon as possible, taking into consideration the impact of the dispute and the time necessary to prepare the documentation for the Dispute Meeting.
3. The Parties are encouraged to carefully follow the steps required by the Contract Documents for times, written notices, decisions and protests related to an issue.

F. PREPARTION FOR A DISPUTE MEETING

1. Prior to the decision by one or both of the Parties to bring a dispute to the DRT, the Parties shall meet and agree on a short statement clearly defining the dispute.
2. The Parties shall also discuss and determine if they can agree to bring the dispute to the DRT using the Informal or Advisory Process rather than at a Dispute Meeting which will require more time and preparation. If requested the DRT members will provide information for the Parties about the Informal or Advisory Process and the possible advantages and disadvantages. If the Parties cannot agree on the Informal or Advisory Process the hearing will be at a Dispute Meeting.
3. The DRT will require from each of the Parties a Position Paper providing information about the dispute, justification for their position based on specific provisions in the Contract and specific references to support their position. The Position Paper should clearly argue why their position is correct contractually and why the other Party's position is not.
4. The amount of information and format of the Position Paper is at the sole discretion of each of the Parties.
5. The Parties shall meet and agree, if possible and jointly indicate in each Position Paper, stipulations of all areas of agreement related to the dispute, such as notices, dates, quantities, specific correspondence and reports, change orders and time factors.
6. The Parties are requested to restrict case law references in the Position Papers. If a Party believes it to be essential to cite specific case law, the DRT will require a written summary and abstract for each reference.
7. The Parties are encouraged to have a minimum number of attendees at the Dispute Meeting. The DRT recommends that one individual, who has been directly involved in the disputed work, be the leader to make the presentation. That person may call on other representatives as required. If a dispute between the Parties involves a subcontractor they shall have present at the Dispute Meeting an authorized representative with direct knowledge of the facts of the dispute.
8. The Parties will include in their Position Papers a list of individuals that will attend the Dispute Meeting and their role in the presentations.
9. As indicated, the DRT members will try to ascertain that effective bilateral negotiation have occurred prior to submission of the dispute. Based on an affirmation of that fact it is reasonable for the DRT to assume that all facts are on the table and all necessary documents have been exchanged. The DRT expects there will be no information presented by either Party at the Dispute Meeting that was unknown and to that end recommends the following level of cooperation in the preparation of the Position Papers.

10. The Parties shall maintain open cooperation and communication during the preparation of the Position Papers to the extent that each will know the exact content of the other's Position Paper. This will also enable the Parties to jointly develop one set of Common Exhibits to accompany each Position Paper. The Common Exhibit shall include an index with tabs to easily locate documents. All pages shall be consecutively numbered for easy reference. The Common Exhibit format will reduce the study time for the DRT before the Dispute Meeting and facilitate presentations during the meeting. The Parties shall contact the DRT Chairman with any concern about the preparation of the Common Exhibit.
11. Position Papers and the Common Exhibit shall be sent to the DRT members and the other Party no later than 14 days prior to the Dispute Meeting.
12. From the date the Position Papers are exchanged the Parties shall not send to the DRT or the other Party any further exhibits or documentation related to the dispute.
13. The DRT members request that paper reproductions of overheads and Power Point Presentations be sent to the DRT members and the other Party no later than 48 hours prior to the start of the Dispute Meeting

G. CONDUCT OF DISPUTE MEETING

1. The Dispute Meeting will be informal and the DRT members will conduct the proceedings.
2. There will be no testimony under oath and no cross examination of presenters by the opposing Party.
3. There will be no reporting of the meeting by a court reporter or by electronic means.
4. It is expressly understood that all DRT members are to act impartially and independently in the consideration of facts and conditions surrounding any dispute. During the Dispute Meeting no DRT member shall express any opinion concerning the merit of any facet of the case.
5. The Party making a presentation shall not be interrupted by the other Party.
6. The DRT members assume that the presentations will be brief and will highlight material contained in the Position Paper which the DRT will have reviewed
7. The DRT members may ask clarification questions but substantive questions should be held until initial presentations have been completed.
8. After initial presentations have been completed, the Parties will move to the rebuttal process. Each Party will have the opportunity to rebut information presented by the opposing Party. This process will continue until the Parties believe they have completed their rebuttal. During this time the DRT members will have the opportunity to ask additional questions of the Parties.
9. The DRT will ask each Party to affirm that they have been given sufficient time to present their position, at which time the Dispute Meeting will be closed.

10. The DRT may exercise an option to declare the Dispute Meeting in recess in order to allow time for the Parties to provide additional information that the DRT believes it needs before preparing the Recommendation. Once the additional information is received the DRT will close the Dispute Meeting.

H. DRT RECOMMENDATION AND EXPLANATION

1. The DRT members will meet in closed session, by conference call and/or by the exchange of draft documents to review the information presented and to agree on a written Recommendation and Explanation. Individual views of DRT members shall be kept strictly confidential.
2. The DRT members will diligently attempt to reach a unanimous recommendation. If that is not possible the dissenting DRT member may prepare a minority report.
3. The DRT's recommendation, together with explanations of its reasoning, shall be submitted as a written report to both parties no later than 21 days after close of the Dispute Meeting. The format and content of the Recommendation shall be determined by the DRT members. The recommendation shall be based on the pertinent provisions of the Contract, applicable laws and regulations, and the facts and circumstances involved in the dispute. It is important for the DRT to express, clearly and completely, the logic and reasoning leading to the recommendation so that both parties fully understand it.
4. The Recommendation and deliberations of the DRT are confidential and shall not be disclosed by the DRT members.
5. If the DRT Recommendation does not resolve the dispute, the written Recommendation, including any minority report, will be admissible as evidence, to the extent permitted by law in any subsequent proceeding or forum to establish:
 - (a.) that a DRT considered the dispute
 - (b) the qualifications of the DRT members
 - (c) the DRT recommendation that resulted from the process