

STATE ARBITRATION BOARD PROCEDURES

1. INTRODUCTION

Arbitration is submittal of a dispute between the parties to a contract to a panel of disinterested persons for determination.

Courts recognize that arbitration is intended to be quasi-judicial in nature, therefore, arbitration panels are not required to apply a legalistic approach or strictly apply rules of evidence or rules of civil procedure in resolving disputes. It is essential that the parties recognize that arbitration is designed to achieve speed, economy and justice in resolving a dispute and consequently is a much less formal dispute resolution process than is litigation.

The State Arbitration Board is an entity of the State of Florida established by Section 337.185 of the Florida Statutes to facilitate the prompt settlement of claims for additional compensation arising out of construction contracts between the Department of Transportation and the various contractors with whom it transacts business.

Section 337.185 of the Florida Statutes provides that, as an exemption to submitting a claim to the State Arbitration Board, either party to the dispute may request that the claim be submitted to binding private arbitration. This type of arbitration is normally conducted under the Construction Industry Arbitration Rules of the American Arbitration Association.

Except for appointment of arbitrators and certain matters relating to administration of the arbitration process, these procedures are, to a large degree, similar to the Construction Industry Arbitration Rules of the American Arbitration Association.

2. PURPOSE

The purpose of these procedures is to enable the State Arbitration Board to effectively carry out the role assigned to it by the Legislature. They are in line with the provisions of 337.185 F.S. and applicable Florida Law.

3. DEFINITIONS

3.1 CLAIM: A demand by either party to a contract for equitable adjustment of payment under a Department of Transportation construction contract. A claim considered by the State Arbitration Board must cover all unresolved disputes arising out of a contract.

3.2 MEMBER: One of the three persons who compose the State Arbitration Board selected in accordance with 337.185(2) F.S. (See Section 5 of these procedures)

3.3 CHAIRMAN: The Member elected by the Members to serve as Chairman and Clerk of the Board in accordance with Section 5.

3.4 EVIDENCE: Testimony, written or printed material or other things presented to the Board as proof for existence or non-existence of a fact pertinent to the dispute being considered by the Board or to support the position of a party to the arbitration.

3.5 BOARD: The State Arbitration Board acting in accordance with the provisions of 337.185 F.S.

4. TERMS OF MEMBERS

Each of the Members serve a 2-year term. All terms begin on July 1 of an odd numbered year and end on June 30 of the next odd numbered year.

5. APPOINTMENT OF MEMBERS

5.1 Department Appointed Member: Prior to July 1 of each odd numbered years, the Florida Secretary of Transportation will appoint one of the Members of the Board. The Secretary may also designate an alternative or substitute to serve as the Department Member for a hearing or for the remainder of a term.

5.2 Construction Companies Elected Member: In May of each odd numbered year, the Florida Transportation Builders Association shall conduct an election for a person to serve as the Construction Companies Elected Member for a term beginning July 1 of that year. Election shall be a majority of those voting in such election. The election must be conducted so that the name of the person to be this Member is available by June 20.

5.3 Third Member: The Department Appointed Member and the Construction Companies Elected Member shall choose a Third Member. If the Third Member should declare a conflict of interest because of an affiliation with either of the parties to a claim presented to the Board, the other members will choose an alternate Third Member to serve in considering that claim.

6. APPOINTMENT OF CHAIRMAN

At the beginning of each term, the Board shall elect one of its members to serve as Chairman and Clerk for the duration of the current term. The Chairman shall perform the administrative functions of the Board. The Clerk shall be the custodian of all the Boards records.

7. ADOPTION OF FORMS BY THE BOARD

The Board has adopted the following forms to facilitate operation of the Board.

Information Memorandum to be used by the Board to provide procedural information to a party who gives notice of intent to file for arbitration.

Request for Arbitration of Claim.

Contract Time Analysis (Required if claim requests release of liquidated damages).

Authorization for Subcontractor to Pursue Arbitration (To be used if appropriate).

Memorandum for Advance Transmittal of Request for Arbitration to Responding Party.

Notice of Evidentiary Hearing.

Time Sheet for Members

Quarterly Financial Statement of the Board. (Income, Expenses & Bank Balance)—Prepared by the Chairman and distributed to the other Members of the Board.

8. JURISDICTION OF BOARD

Florida Statute 337.185(1), as revised by the 1999 Florida Legislature with an effective date of 7/1/99, provides the following monetary limits for arbitration of a Claim (see definition in Subsection 3.1 of the procedure) by the State Arbitration Board:

A claim in an amount up to \$250,000, excluding interest claimed, shall be submitted for arbitration.

At the claimant's option, a claim in an amount greater than \$250,000 but not greater than \$500,000, excluding interest claimed, may be submitted for arbitration.

Upon agreement by both the Contractor and the Department, a claim in an amount greater than \$500,000 but not greater than \$1,000,000, excluding interest claimed may be submitted for arbitration.

NOTES:

If the total amount claimed is \$250,000 or less, a suit cannot be initiated in a Circuit Court.

Regardless of the amount claimed, once a hearing under 337.185 F.S. has been initiated, a court of law may not consider the settlement of the claim until the arbitration process has been completed by the Board or through private binding arbitration if applicable.

9. CONDITIONS FOR A CLAIM TO BE ELIGIBLE FOR ARBITRATION

The following conditions must be met in order for a claim to be eligible for arbitration by the State Arbitration Board:

- a. The claim must arise out of a Department contract for construction of a transportation facility.
- b. See jurisdictional limits of the Board in Section 8.
- c. In accordance with Section 337.185(1) F.S., a claim cannot be considered by the Board until after acceptance of the project by the Department.

- d. The claim must be a dispute between the Department and the prime contractor. If a claim arises out of work contained in a subcontract, the prime contractor may authorize the subcontractor to pursue on the prime contractor's behalf.
- e. The claim must deal only with disputed issues which have been previously submitted to the other party to the contract and could not be resolved by negotiation.
- f. If a Disputes Review Board was constituted for the project(s) included in the contract, only issues which have been heard by the Disputes Review Board may be included in a claim submitted for arbitration.
- g. A Request for Arbitration of a Claim must be filed with the Board in accordance with the requirement's set out in Section 10 within the time limit established in 337.19 F.S. The time limit in the current version of 337.19 F.S is 820 days after final acceptance of the work by the Department.

10. INITIATING ARBITRATION

Upon request, the Board will make available to a party wishing to initiate arbitration a procedural package containing the necessary forms and a copy of these procedures.

Arbitration of a claim meeting the conditions set out in Section 9 may be initiated by either party to the contract by submitting a Request for Arbitration of a Claim form to the Chairman at the office of the Board. The initiating party must indicate on the form whether or not they will be represented by counsel during the hearing and may indicate a desire for the Board to resolve the claim based solely on submittal of documents by the parties with no hearing or that the hearing be bifurcated to provide consideration of entitlement separate from consideration of monetary damages.

This form shall be accompanied by:

- a. A brief summary of the nature of the dispute involved in each part of the claim.
- b. The amount of compensation being requested for each part of the claim along with supporting information.

- c. The amount of interest being claimed, if any, and the period(s) over which interest is being claimed.
- d. Copies of all written information, including exhibits, intended to be used during the hearing to support the claim, excluding the contract documents. It is suggested by the Board that 4 copies of the information be assembled in a tabbed notebook and pages numbered for ease of reference.
- e. Contract Time Analysis form (if release of liquidated damages is included in the claim.)
- f. Authorization for Subcontractor to Pursue Arbitration (If Contractor wishes to authorize a subcontractor to pursue a claim arising out of the Subcontractor's work).
- g. Evidence substantiating that all disputes on which the claim is based have been previously submitted to the other party for consideration.
- h. If the Contractor has executed a Qualified Acceptance Letter (a form provided by the Department), evidence that the Contractor gave notification of the claim submitted for consideration by the Board in or as an attachment to this document.
- i. Evidence that the Department has accepted the work.
- j. If a Disputes Review Board was constituted for the project(s) included in the contract, a copy of the DRB recommendation(s) covering the issues included in the claim.

The party initiating arbitration may at any time increase or decrease the amount being claimed.

No substantially new or different claim, other than a change in the amount claimed, will be allowed once the time and date for the hearing has been set by the Chairman.

If a party to the contract requests the presence of a former employee of the other party or a person who had no direct involvement in the disputed issues, the requesting party shall arrange for attendance of that person including paying any expenses related to attendance.

If the Board determines that information known to a person not in attendance at the hearing is essential to arriving at its decision, the Board may obtain a written affidavit from that person and enter such statement into the record of the hearing.

NOTE:

THE REQUEST FOR ARBITRATION OF A CLAIM AND ALL SUPPORTING INFORMATION SHALL BE SUBMITTED TO THE BOARD IN QUADRUPPLICATE. THIS REQUIREMENT DOES NOT APPLY TO THE CONTRACT DOCUMENTS OR VOLUMINOUS COST DATA.

The Request for Arbitration of a Claim shall be accompanied by a check made payable to the State Arbitration Board to cover the administrative fee established by the Board as provided in 337.185(8)F.S.

ADMINISTRATIVE FEE SCHEDULE

<u>AMOUNT OF CLAIM</u>		<u>FEE</u>
<u>FROM</u>	<u>TO</u>	
\$ 0.01	\$ 25,000	\$ 500
\$ 25,000.01	\$ 50,000	\$1,000
\$ 50,000.01	\$100,000	\$1,500
\$100,000.01	\$200,000	\$2,000
\$200,000.01	\$300,000	\$2,500
\$300,000.01	\$400,000	\$3,000
\$400,000.01	\$600,000	\$4,000
\$600,000.01	\$1,000,000	\$5,000

The Administrative Fee is non-refundable except as follows:

If the Request for Arbitration of a Claim is withdrawn by the submitting party prior to a hearing being schedule by the Chairman, the Administrative Fee will be refunded except for \$300 to cover administrative costs incurred by the Board.

If the Request for Arbitration of a Claim is withdrawn by the submitting party after a hearing has been scheduled by the Chairman but before a hearing is conducted, the Administrative Fee will be refunded except for \$500 to cover administrative costs incurred by the Board.

11. ADMINISTRATION OF ARBITRATION

- a. The Chairman shall review each Request for Arbitration of a Claim received by the Board to determine whether it complies with the conditions set out in Section 9. If necessary the Chairman will communicate with the party that submitted the request to attempt to resolve any discrepancies in the form or related documents as submitted. If the initiating party requested that the Board resolve the claim based solely on documents submitted or that the hearing be bifurcated to consider entitlement separate from monetary damages, the Chairman shall determine whether or not the responding party concurs.
- b. When the Request for Arbitration of a Claim is found to be satisfactory, the Chairman shall send a copy of the Request for Arbitration of a Claim package to the respondent.
- c. The respondent shall prepare a rebuttal to the claim package and furnish a copy to the party requesting arbitration and to each of the members of the Board so that it is received at least ten (10) days prior to the date scheduled by the Board for the evidentiary hearing.
- d. The Chairman shall set a time and date for an evidentiary hearing and notify the parties at least 21 days in advance. In scheduling the time allotted for a hearing for complex claims that are in excess of \$250,000, consideration will be given to the need for the greater amount of testimony required in order for the Board to gain a complete understanding of the issues.
- e. The parties are expected to cooperate fully with each other in exchanging information concerning documents prior to the hearing before the Board. In general, it is expected that the parties will have exchanged all documents relating to the claim during negotiations between them prior to arbitration being initiated. In any event, full exchange of documents shall be completed no later than seven calendar days prior to the date set for the evidentiary hearing. The Board will generally not allow introduction of documents during the hearing which have not been previously been revealed to the other party (See additional information in Section 12).

- f. Involvement of attorneys in a hearing:
- (1) A party may be represented by counsel at any hearing.
 - (2) In cases where the amount claimed is not greater than \$250,000, the hearing will be very informal and the Board expects involvement of attorneys to be limited to guiding a party in its factual presentation as necessary and explaining any legal points made.
 - (3) In cases where the amount claimed exceeds \$250,000 and the circumstances of the claim are complex, the hearing may be more formal, but a strictly legalistic approach to presentations will not be allowed. The Board will assure that the parties have full opportunity to offer such evidence as is relevant and material to the dispute and will require that the parties produce such evidence as the Board deems necessary to an understanding and determination of the disputed issues. However, unnecessary extensive examination or cross-examination or extensive argument of legal points by attorneys representing the parties will not be permitted.
- g. In cases where the amount claimed is greater than \$500,000, at the request of a party or at the discretion of the Chairman, an administrative conference involving the parties and/or their representatives and the Chairman will be scheduled prior to the notice of an evidentiary hearing being issued. The purpose of this conference is to expedite the arbitration proceedings. Typical items to be discussed might included the status of any settlement discussions that may be underway, need to provide an increased level of specificity as to various elements of the claim, stipulation of uncontested facts, production of documents and date of evidentiary hearing. This conference may be held by telephone.
- h. In cases where the amount claimed is greater than \$500,000, at the request of a party or at the discretion of the Chairman, a preliminary hearing will be held by the Board to the notice of an evidentiary hearing being issued for the purpose of dealing with certain matters that must be resolved prior to the evidentiary hearing. These matters might include providing additional specifics in regard to the issues to be resolved, stipulation of uncontested facts, dealing with exchange of information between the parties (including a schedule for such), exchanges of witness lists, advance filing of exhibits, whether or not post-hearing or

pre-hearing briefs will be necessary and the time to allotted for the evidentiary hearing.

ALL COMMUNICATIONS BETWEEN THE PARTIES AND THE BOARD CONCERNING ADMINISTRATIVE MATTERS SHALL BE CONDUCTED THROUGH THE CHAIRMAN.

12. CONDUCT OF EVIDENTIARY HEARING

Evidentiary hearings before the Board shall be held in the Board Room of the Florida Transportation Center located at 1007 DeSotot Park Drive, Tallahassee, FL 32301 unless the Board determines that special conditions justify the hearing to be held elsewhere.

Arbitration hearings will be conducted in an informal manner as opposed to the more formal approach used in judicial proceedings. Section 337.185 F.S. clearly sets out that the purpose of arbitration is to facilitate the prompt settlement of claims arising out of Department of Transportation contracts. It is incumbent on the Board to assure that the arbitration process is carried out with dispatch and efficiency.

THE DEPARTMENT OF TRANSPORTATION SHALL MAKE AVAILABLE FOR EXAMINATION BY THE BOARD DURING THE HEARING A SET OF THE PLANS AND THE COMPLETE CONTRACT FOR THE PROJECT(S) FROM WHICH THE CLAIM AROSE.

The chairman shall preside over the hearing. If appropriate, he will consult with the other members of the Board prior to making rulings.

The Chairman will make an opening statement identifying the Board and describing the manner in which the hearing will be conducted.

The Chairman shall administer an oath to all persons who are to testify during the hearing.

The Chairman shall accept documents and identify them for the record. If there is a dispute between the parties of admissibility of a document, the Board will make a ruling.

The Chairman may direct that distinct parts of a claim be dealt with separately.

The order of proceeding will be for the party initiating arbitration to present evidence to support their claim and then for the respondent to present evidence supporting its rebuttal. At the beginning of their initial presentation a party shall present a succinct statement of the issues coming before the Board and a position on each issue. Orderly discussion between the parties as evidence is presented will be allowed. The purpose of testimony before the Board is to present factual information and the parties' arguments supporting their positions on how the facts should be applied.

Every reasonable attempt will be made by the Board to assure that all relevant evidence necessary to an understanding of the disputed issues and of value in resolving the claim is heard and that the other party has the opportunity to adequately rebut all arguments and evidence submitted. The Board will be the sole judge of the relevance and materiality of evidence offered and conformance to legal rules of evidence shall not be necessary. The Board is composed of persons who are sufficiently sophisticated to be able to disregard evidence which is not relevant or reliable.

Members of the Board may ask questions of the parties for the purpose of clarification.

For larger dollar amount, complex claims where significant legal counsel participation is found necessary in order to effectively present the positions of the parties, attorneys are reminded that arbitration is intended to be a less formal process than litigation and that strict application of rules of evidence is not appropriate during an arbitration proceeding. The Members possess a working knowledge of highway construction contract documents and how these contracts are traditionally administered and are seeking only the facts necessary for making their determination.

The attorneys will not be allowed to conduct direct examination or cross-examination of witnesses or make convoluted legal arguments.

Presentation of irrelevant or repetitive testimony or arguments will not be allowed.

If, during a hearing, the Board should allow a party to present testimony or submit documents relating to information not previously made available to the other party which will require a detailed analysis in order to develop an effective rebuttal, the Board may offer the other party the opportunity to submit to the Board a written affidavit providing rebuttal to the new information within 10

days of the date on which the evidentiary hearing is closed. This affidavit shall also be sent to the party submitting the new information. If the Board receives a written affidavit, the Board will not issue its Order until receiving a rebuttal statement from the other party, except that this requirement may be waived by the Board if the other party fails to respond within 10 days after receiving the written affidavit. In considering evidence contained in an affidavit, the Board will give it such weight as it deems appropriate.

In substantial new information is submitted during a hearing which the Board deems places the other party at a sever disadvantage because of inability to develop an adequate rebuttal, the Board may elect to extend the hearing to a later date.

The Board shall arrange for a stenographic record of all hearings by a Certified Court Reporter. The parties will be furnished a transcript along with the Order of the Board.

13. POST HEARING ACTIVITIES OF BOARD

Within 60 days after closing of the evidentiary hearing the Board shall meet in closed session to review the testimony received and, in accordance with the contract provisions and applicable law, issue its written Order. In its deliberations, the Board will generally place considerable weight on the recommendations by a Disputes Review Board that did a contemporaneous analysis of a dispute.

If, during deliberation, all three members do not agree, the order of the majority will constitute the Order of the Board. The vote of individual Members will not be recorded.

The Order of the Board shall be filed with the Clerk of the Board.

14. ORDER OF BOARD

An Order of the Board will fully address all matters submitted to the Board for decision in a clear and definitive manner. If the Board deems it necessary, an Order will concisely specify what, if anything, was granted for each part of the claim. If the claim arose in part from the work of a subcontractor the award will be to the prime contractor but the Order will provide sufficient detail to allow determination of the amount due the subcontractor.

Any pre-hearing interest awarded by the Board will be at the annual rate established by the State Comptroller in accordance with 55.03 F.S. unless the

interest rate for pre-hearing interest on claims was specifically set out in the contract.

An Order will include an appointment of the cost of the stenographic record between the parties as follows:

NOTHING AWARDED: The entire cost will be assessed against the party submitting the claim.

AN AMOUNT IS AWARDED FOR ALL PARTS OF A CLAIM: The entire cost will be assessed against the respondent.

MULTI-PART CLAIM WITH AN AMOUNT AWARDED FOR SOME PARTS OF A CLAIM: The cost will be prorated between the parties in accordance with the number of parts of the claim for which an amount was awarded.

The Board will not assess against the respondent the claimant's cost of preparing a claim, preparing for arbitration, appearance at a hearing before the Board or any part of the administrative fee paid in accordance Section 10 of this procedure.

An Order will be promptly filed with the Clerk of Board. The parties will be notified of such filing and furnished a certified copy of the Order and a certified copy of the transcript of the stenographic record. The Board will not furnish the parties copies of exhibits.

15. ENFORCEABILITY OF BOARD ORDERS

The Orders of the State Arbitration are considered by law to be a final action of a state agency. Therefore, judicial review is in accordance with 120.68 F.S. (A Section of the Florida Administrative Procedures Act.) which provides for review by a District Court of Appeal under a narrow set of parameters.

The Board is not a necessary party in any subsequent judicial proceedings arising out of a Claim considered by the Board.

If a Member is subpoenaed to appear in regard to subsequent litigation, the Member shall be compensated for such service as the Member's established hourly rate plus any travel expenses incurred.