

Disputes Review Boards

DRB Task Team Efforts in 2009

DRB Task Team

- In late 2008, FDOT, FTBA, and the Florida Chapter of the DRB Foundation formed a Task Team
- Goals of the team were to review FDOT current processes for selection of members, meeting frequency, recommendations acceptance/rejections, compensation, improving relationships

DRB Task Team – It's a dirty job,
but somebody's got to do it



DRB Task Team- Members

FTBA – Bob Burleson

- Bob Shafer – Ranger Construction
- Keith Waugh – Leware Construction
- Nathaniel (Tug) Winthrop – Cone & Graham

DRBF – Florida Chapter – Dr. Ralph Ellis

- Bobby Buser
- Rammy Cone
- Bill Deyo

FDOT – David Sadler

- Pete Nissen – District 4
- Frank O’Dea – District 5
- Carrie Stanbridge – District 2

DRB Task Team

Items on which the team worked were:

1. Member selection
2. Member workload
3. DRB hear issues between Prime and Subs
4. Sudden meeting cancellations
5. Frequency of meetings
6. Rejections of recommendations
7. Review team of recommendations prior to a rejection
8. Compensation
9. Evaluation of recommendations - policing DRB members
10. Develop an example boilerplate DRB recommendation
11. Three Party Agreement
12. Operating Guidelines

Item 1 – Member selection

Discussions about:

- Conflicts of interest of members
 - Selection criteria
 - Member rejections – gamesmanship
 - Approved members selecting chairman w/o input of Contractor or FDOT
 - Member objectivity
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- Consensus was to leave member selection as it is with exception to selection criteria

Item 2 – Member workload

Discussions about:

- Number of boards on which can serve at a time
- Conducting multiple project meetings on same day
- Members falling asleep during hearings
- Members unprepared for hearings

- Consensus of group was that process works well 95% of the time

Item 3 – DRB issues between Prime and Subs

Discussion about:

- Allowing DRB to hear issues of dispute between the Prime and Subcontractors
- Between outside third party and the Contractor
- Consensus was that this is not the role or function of the DRB on FDOT projects

Item 4 – Sudden cancellations

Discussion about:

- Meeting cancellations and appropriate noticing of participants
- Minimum amount of days before cancellation
- It was agreed that this was not a significant issue and that the earliest possible notice should be provided. Three Party Agreement addresses already and language is sufficient.

Item 5 – Meeting Frequency

Discussion about:

- How often should project meetings take place
 - Monthly vs. Quarterly
- Unilaterally set meeting frequency
- DRB input into frequency
- Group settled upon the decision on meeting frequency being left exclusively to the Contractor and the Department with no input from the DRB

Item 6 – Recommendation Rejection

Discussion about:

- Numbers of rejections increasing
- Why are recommendations rejected?
- Who rejects?
- Should there be an oversight review committee prior to rejection? Super Majority
- Explanation for rejections need to be clearer
- Within the “terms of the contract”
- All recommendations a District believes should be rejected are reviewed by SCO – not all are rejected

Item 6 – Recommendation Rejection

	Total through July 2009	CY 1999 through 2005	Post 2005	Adjusted Post 2005
Recommendations	281	110	171	156
Rejections	45	14	31*	16
Percent Accepted	84.0%	87.3%	81.9%	89.7%
Percent Rejected	16.0%	12.7%	18.1%	10.3%
Contracts	151			

*** 15 of the 31 rejections listed were from 2 projects**

Item 7 – Review Team for Recommendations

Discussion about:

- Implementing a separate review team to evaluate recommendations being considered for rejection
 - Additional layer of bureaucracy
 - Review team would be disconnected to the project
 - Oversight of Board's members based on review of recommendations
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- Consensus was to not add additional layer of bureaucracy

Item 8 – Compensation

Discussion about:

- No increases in rate since 2003
- Rates below other state DRBs
- Hourly rate vs. daily rate
- Invoices for pay
- Tie to cost of living increase
- Boards paid by FDOT or split with Contractor
- Consensus was that a rate increase was due

Item 9 – Evaluation of DRB Recommendations

Discussion about:

- Evaluating the recommendations as a means of policing the members
- Suggested that if a DRB member is not performing that either the Contractor or FDOT should bring the matter to FTBA President, Florida DRBF Chapter President, and Director, Office of Construction for their review

Item 10 – Boilerplate DRB Recommendation

Discussion about:

- Development of a boilerplate DRB recommendation format
- Stress consistency and what is expected to be presented in the recommendation – basis within contract for DRB decision
- Standard format for requests for clarifications
- DRBF will be developing template for its members to use

Item 11 – Three Party Agreement

Discussion about:

- Changes needed to address agreed upon revisions
- Proposed revisions under review within FDOT
- Expected implementation date of January 2011

Item 12 – Operating Guidelines

Discussion about:

- Success of the process keyed to parties following the guidelines
- Reasonableness in the procedures and guidelines
- Structured enough to stay on course, flexible enough to allow adjustment

- Consensus was some minor adjustments related to agreed upon changes needed

DRB Task Team

This team met in April, June, July, and September 2009.

From these meetings, the content for the proposed changes was derived.

The State Construction Office has revised the Three Party Agreement, the specifications, CPAM, and the Operating Guidelines

DRB TPA Changes

Meeting Frequency – determination will be decision left to the Contractor and the FDOT with no input from the DRB members.

Meeting frequency will generally be monthly for 1st three to six months, then as agreed upon by Contractor and FDOT.

Maximum quarterly interval between meetings.

DRB TPA Changes

Compensation to the Board will be revised as follows:

Chairman - \$3,000 per hearing

Members - \$2,500 per hearing

Compensation for hearings to be equally divided between Contractor and FDOT.

DRB TPA Changes

Compensation continued:

The total \$8,000 per hearing rate is to cover –

- travel, accommodations, meals

- pre- and post- hearing work

- review of position and rebuttal papers

- Conducting the hearing

- Member deliberations

- Drafting and issuing the recommendation

- Addressing any clarification questions

DRB TPA Changes

Compensation continued:

It is expected that hearings will not last longer than a day. Should a request for additional time for a hearing be made, the Contractor and FDOT will have to agree on the need for it and grant approval prior to the hearing.

Compensation rate for approved additional hearing day is at \$1,100 per day per member.

DRB TPA Changes

Compensation continued:

Costs for regular project meetings will be at rate of \$1,100 per member per meeting.

FDOT will pay 100 % of the cost for the regular project meetings.

DRB TPA Changes

There have been some additional changes to the Three Party Agreement suggested by other FDOT offices related to:

DESCRIPTION OF WORK

SCOPE OF WORK

VENUE, APPLICABLE LAW

mostly having to do with definitions – will be available for review when language settled.

DRB Specs Changes

Changes to the DRB Specs are in two main areas:

Conflict of interest requirements – Full-time, active employees of Contractors or Consultants will be ineligible from participating on DRBs.

Addressed compensation changes noted in the Three Party Agreement.

DRB Specs Changes

These changes were made to all versions of DRB specs –

Project Specific DRB

Regional DRB

Statewide DRB

Changes addressed payments, eligibility,

DRB Operating Guidelines

Changes reflecting:

- Meeting frequency
- Member selection criteria
- Compensation

CPAM – Proposed Changes

The Construction Project Administration Manual (CPAM) has been reviewed and revised to ensure that guidance provided in Chapter 3.4 is consistent with changes proposed from the Task Team work.

Membership Roster

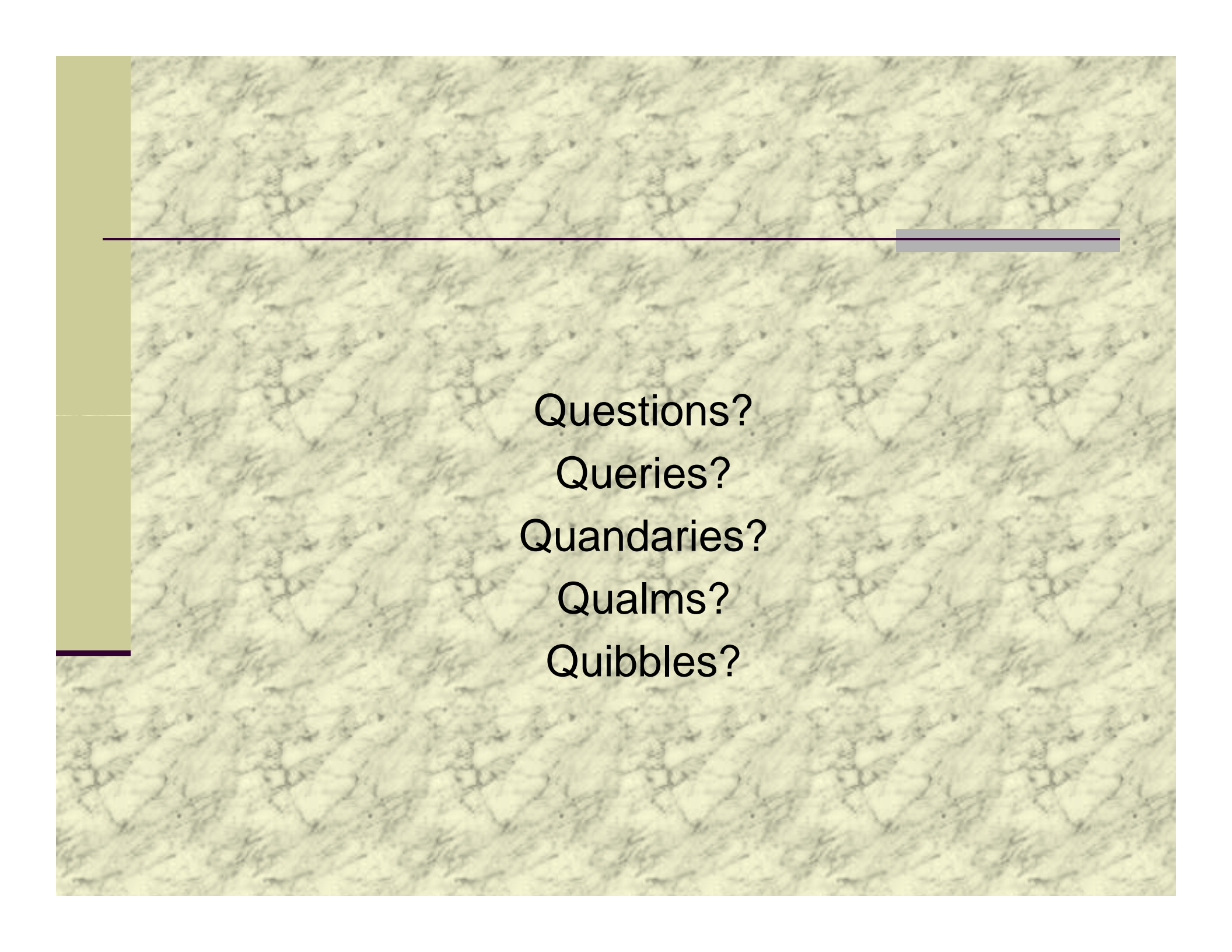
FDOT has, or will be, contacting candidate members listed on the SCO website to solicit continued interest in DRBs.

Will also be dividing the list into categories of active and inactive based on current employment status related to eligibility.

Proposed Changes

Intent was to have these ready to implement in July 2010 lettings but timeframe now is January 2011.

All of the proposed changes will be available for review prior to implementation.



Questions?
Queries?
Quandaries?
Qualms?
Quibbles?