



**DISPUTE RESOLUTION**

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**To:** Paul Huston, P.E., Design-Build Coordinator  
**From:** Chuck Gonderinger, HDR Engineering  
**Date:** March 19, 2001  
**Subject:** Dispute Resolution (Supplemental Provision)  
**Project:** TH14/218 Design-Build Project, SP 7408-29, Owatonna, MN  
Minnesota Department of Transportation (the Department)  
**Copy:** Richard Augustin, P.E., Project Manager  
Kevin Anderson, P.E., Bridge Project Manager

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**1<sup>3</sup>/<sub>4</sub> GENERAL PROCESS**

**Dispute Escalation.** The Minnesota Department of Transportation (Department) has suggested that this project employ a method of dispute resolution that includes a four-tiered dispute escalation process. In this process, representatives of both the design-builder and the Department will work together to resolve a dispute without a formal claim being submitted. The fourth tier of the escalation process consists of senior decision-makers. If the dispute is not resolved informally, then the dispute is escalated into formal dispute resolution, wherein a Notice of Claim and claim are submitted and the District 6 Engineer makes a final decision. If the design-builder disagrees with the final decision, it may then submit the dispute to arbitration.

We recommend using the escalation process for all disputes, and modifying the Department's Special Provisions by adding the escalation criteria described in this memorandum. Oversight of the project by the Department will be an integral part of the dispute escalation process and resolution.

This in no way reduces or minimizes the authority of the Engineer or the Project Engineer as set forth in Section 1501 and 1509 of the 2000 Standard Specifications for Construction.

**S-2 DISPUTE RESOLUTION AND ARBITRATION**

The provisions of Mn/DOT S-2 shall be replaced by the following:

**SPECIAL PROVISION**

It is the purpose of this Special Provision that claims for additional compensation and any difference between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time and at the first responsible level to increase the possibility that such matters will be resolved or that appropriate action can be



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taken promptly. This section shall apply to all claims including, but not limited to, claims based on contract clauses and on claims based on breach of contract or tort. This section shall apply to all claims arising throughout the duration of the project and the five-year warranty period.

S-2.1 Time Schedule for Resolution of Disputes and Claims Decisions Through the Escalation Process:

Unless otherwise agreed through partnering or subsequently changed by written mutual agreement between the Design-Builder and the Department (which shall not require a contract supplemental agreement), the time schedule for escalation of unresolved issues to the next higher level of authority shall be:

Dispute Escalation Tiers

<i>Tier:</i>	<i>Level of Authority and Responsibility</i>		<i>Time Limit:*</i>
	<i>Design-Builder:</i>	<i>Department:</i>	
1	Construction Engineer or Design Engineer	and Resident Engineer	2 days
2	Superintendent or Design Manager	and District Engineer	5 days
3	Principal-in-Charge	and Chief Engineer	14 days

*\* Time (in working days) in which dispute must be resolved or passed on to next tier.*

S-2.2 Decision on Claims:

The Engineer will make a written decision in relation to any claim presented by the Design-Builder for an adjustment in compensation or other contractual dispute between the parties. Unless the Design-Builder and the Engineer otherwise stipulate in writing to a later time, the time limits for this decision will depend upon the amount at issue and will be as follows:

- (A) \$100,000.00 or less: 60 Calendar Days from the receipt of the Design-Builder's claim
- (B) More than \$100,000.00: 90 Calendar Days from the receipt of the Design-Builder's claim

If the Engineer does not make a decision or determination within the time frames prescribed in this subsection, the claim shall be deemed denied and the Design-Builder may proceed with the legal remedy prescribed herein.



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The decision of the Engineer in relation to the Design-Builder's claim shall be deemed final unless the Design-Builder commences a legal action within the time prescribed by law or unless the Design-Builder invokes arbitration as prescribed hereafter in these Special Provisions. Nothing herein contained shall be so construed as to preclude the Design-Builder from commencing a legal action in relation to claims for a single issue.

**S-2.3 Arbitration of Claims and Disputes:**

The Design-Builder may appeal a final decision by the District 6 Engineer on a claim by using the arbitration process, as follows.

(A) All arbitration of claims shall be conducted in Minneapolis, Minnesota, or another mutually agreed upon location, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (Association) then in effect.

(B) If the Design-Builder elects to invoke its right to arbitration, the Design-Builder shall file a Demand for Arbitration in writing with the Association and serve a copy thereof upon the Chief Engineer. Such Demand for Arbitration shall be made by claimant within 30 Calendar Days, measured from actual receipt of the Engineer's decision as provided for above. The scope of the arbitration proceeding shall be restricted and limited to the matters presented to the Engineer upon which the decision or determination was made and shall include no other matters.

When the amount of the claim for arbitration is less than \$10,000.00, the Demand for Arbitration shall be given as provided for above, but the date set by the Association mediator for the hearing may be delayed by mutual consent until a date that is convenient for all parties. In no instances will this delay exceed one year from the date of Demand for Arbitration.

(C) Because many issues will combine both a question of responsibility or liability and an issue of compensation amount, the arbitration of such issues shall be bifurcated (i.e., separate rulings will be made). The arbitrator shall rule as to liability prior to receiving evidence or testimony on any damage claim. In the event that the State is found to be liable to any degree, the arbitration proceeding shall continue before the same arbitrator to resolve any and all damage issues.

(D) Each party shall submit to the arbitrator and exchange with each other in advance of the hearing their last best offers. The arbitrator shall be limited to awarding only one of the two figures submitted.

(E) The decision or award of the arbitrator shall be supported by substantial evidence and, in writing, contain the basis for the decision or award and the findings of fact. The decision or award by the arbitrator when made shall be final and binding on both the



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State and the Design-Builder. There shall be no right of appeal of the decision and the award shall have the same finality as is accorded awards under the Uniform Arbitration Act, Minnesota Statutes Chapter 572.

(F) For purposes of this section, a claim for adjustment in compensation shall mean an aggregate of operative facts, which give rise to the rights, which the Design-Builder seeks to enforce. That is to say, a claim under this section is defined as the event, transaction, or set of facts that give rise to a claim for compensation costs or expenses or damages.

(G) The claim shall be submitted to a single mediator who shall be selected from a list of mediators furnished by the Association. Any procedure that is mutually agreed upon by all parties to the dispute for the selection of the mediator may be used, but in the absence of mutual agreement, the following selection procedures shall be used. Beginning with the Department, each party shall alternately strike one name from the list until only one name remains. The parties shall advise the Association that the person whose name thus remains on the list of mediators is their first choice, but that, if that person is not able to serve, the two persons whose names were last stricken are acceptable, and the one whose name was last stricken shall be the first alternate.

(H) Unless mutually agreed to otherwise, the parties shall select the arbitrator within ten Calendar Days after each has received a copy of the list of arbitrators from the American Arbitration Association. If for any reason the parties do not select the arbitrator in the manner and within the time provided herein, the arbitrator shall be selected in accordance with the procedures of the American Arbitration Association.

(I) Each party to the arbitration shall bear its own costs, and fees assessed by the American Arbitration Association shall be divided equally between the parties to the arbitration. This payment will be accomplished by the Design-Builder paying in full all costs and fees assessed by the American Arbitration Association for the arbitration, then submitting the bill to the Engineer for 50 percent reimbursement.

(J) More than one separate claim may be presented at each arbitration hearing if agreed to by the State, the Design-Builder, and the arbitrator.