DISPUTE REVIEW BOARD

State of California - Department of Transportation

Contract Number 04-0120E4- SAS Bridge-Foundations E2/T1

RESPONSE TO REQUEST FOR CLARIFICATION OF DRB
RECOMMENDATION FOR NOPC #6

The Dispute Review Board's response to the Department's Request for Clarification, dated January 11, 2008, of its Recommendation for NOPC #6 – Welder Trainee Issue, is as follows:

(1) Constructive Notice

The Board did not, as the Department asserts, base many of its conclusions on the Department's letter dated May 10, 2006, and we would refer the Department to the DRB Conclusions, specifically to the paragraph beginning at the bottom of page 13 and concluding on the top of page 14, which states in part:

> " However, the DRB reviewed the contemporaneous actions of, and the correspondence between the parties leading up to the actual filing of the Initial NOPC on June 20, 2007. The record is replete with correspondence and meetings between the parties regarding the welder trainee issue, between May 2006 and June 2007 and it seems clear there was constructive notice of potential claim virtually during that whole period of time."

The DRB wishes to point out that "constructive notice" does not necessarily have to be written as it can also be conveyed verbally or as a combination of both verbal and written communications.

The Board understands the issues raised in the Department's letter of May 10, 2006 [letter No. 05.003.01-001137], the TBS letter dated May 11, 2006 and KFM letter No. 165 dated May 23, 2006. The e-mail communications of May 10, 2006 confirms the parties were well aware of the welder trainee problem and were working to resolve the issue by issuing CCO #039.

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(2) Code and Specification Interpretation

The DRB concluded in the paragraph beginning at the bottom of page 11 and the first paragraph on Page 12 of its Report that the intent of the AWS Code and the Contract specifications is to require all SAW process production welds to be performed by qualified welding operators but does not prohibit trainees assisting qualified welders in the SAW production welding process as long as the qualified welding operator remains present full time and directly supervises and controls the welding operation. Thus, at any given time, the approved welding operator should only be at one welding station at a time.

In response to the question raised regarding the basis for the concept of "effective control", the Board refers the parties to Item 3 of the Department's proposed addendum to TBS's Welding Quality Control Plan (Department's letter to KFM of June 5, 2006) and quoted in the second paragraph on page 12 of the Board's Report, as a very good explanation of the concept of "effective control".

(3) Arguments not presented

The Board's Conclusions presented "in paragraphs 62 through 67 and 70" were based on "the contemporaneous actions of, and correspondence between the parties, leading up to the actual filing of the Initial NOPC on June 20, 2007". The Board concluded that negotiations relating to the welder trainee issue were ongoing after the Department notified the Contractor that CCO #39 would not be issued, as described in the DRB Findings on the last three paragraphs of page 9 of the DRB Report.

This response has been discussed, reviewed and agreed upon by all three members of the DRB, Messrs. Richard Lewis, Ronald Maasberg and Warren Bullock.

Warren M. Bullock
DRB Chairman

Dated: January 17, 2008