

**DEPARTMENT OF TRANSPORTATION - District 4 Toll Bridge Program**

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Dispute Review Board (DRB)

December 11, 2007

Attn: Mr. Warren Bullock  
DRB Chairman

Contract No. 04-0120E4  
04-SF-80-13.4, 13.8  
SAS T1 & E2 Foundations  
SFOBB-ESSSP

Letter No. 05.013.01-000010

Subject: Additional Information Requested by DRB -- NOPC #6

Dear Warren,

This letter is in response to the request from the Board for additional information dated November 25, 2007, and as clarified on November 29, 2007. You request written submissions, i.e., "providing evidence in support of their respective positions, including affidavits/signed written statements." You also state that the Department's position was something to the effect of "Caltrans testified that TBS did not use Trainee Welding Operators on production SAW welding on prior Department contracts, nor on this contract until December 6, 2005." This is not what the Department presented.

In the DRB dispute meeting on October 30, 2007, the Department stated that it has never witnessed the use of unqualified trainee welding operators operating on production work prior to December 6, 2005.

1. The Department presented that there was no evidence of any training program, written or otherwise, to train welding operators on SAW welding.
2. The Department also stated that prior to the NCR on December 6, 2005, the Department had not observed even the informal use of trainees on production welding.
3. The first actual description provided to the Department of an actual plan (either written or verbal) describing the welding operator trainee program was during the DRB presentation made on October 30.

We have discussed this issue with various Departmental personnel directly involved in the work at TBS before and after December 6, 2005, and we were unable to find evidence that demonstrated that TBS had a long-established, defined welding operator trainee program, or any program at all.

The Department would like to take this opportunity to reiterate that this dispute is not an issue of when or even whether a trainee program existed, it is a question of whether un-qualified welding operators were witnessed operating welding equipment on production work. As stated in the DRB dispute meeting, and as required in various sections of the AWS D1.1 Structural Welding Code, all welders or welding operators must be qualified prior to welding on production work. Any welding operator is only allowed to weld on production work after he has completed qualification tests and is approved by the Engineer. There are no provisions in the Code or the Special Provisions which allow for the direct supervision of welders or welding operators, such "responsible charge" is not consistent with the requirements that all welders or welding operators must be qualified prior to welding on production work. Finally, regardless of trainee use or not, due to the untimely notice of the alleged impacts to TBS, the Department was precluded from verifying if there were any consequences and from verifying their extent or mitigating the same. It should also be noted that the alleged inefficiencies described in the claim were not observed during the course of the E2/T1 contract.

With respect to your e-mailed request for additional information dated November 25, 2007, the Department would like to remind you of the requirements of Item J of the Operation subsection of Section 5-1.15, "Dispute

Review Board,” of the Special Provisions. Item J states, “The DRB may request clarifying information of either party within 10 days after the DRB dispute meeting.” Further, Part D, “DRB Consideration and Handling of Disputes,” from Section II of the DRB agreement requires that, “There shall be no testimony under oath or cross-examination,” and “Documents and verbal statements shall be received by the DRB in conformance with acceptance standards established by the DRB.” The Department respectfully requests that in the future, the DRB honor the terms of the Contract and the DRB Agreement.

Respectfully, in light of the above-noted requirements, as well the threats of legal action against the Department’s staff, we have tried to comply with the intent of your request as discussed in the DRB quarterly update meeting. We have developed the above comments based upon discussions with various department personnel with direct knowledge of the work at TBS and they support my personal observations at TBS. We hope that this meets the needs of the DRB. If you have any questions regarding this matter please contact this office.

Sincerely,

**<<< ORIGINAL SIGNED >>>**

Mark P. Woods  
Bridge Construction Engineer

for Pedro J. Sanchez  
Resident Engineer

cc: R. Lewis  
R. Maasberg  
P. Sanchez  
D. Proctor

file: 05.013.01, 21.002, 62.001.06