

## SCHEDULE "14"

### DISPUTE RESOLUTION PROTOCOL

BETWEEN

THE MAINTENANCE SECTOR OF

B.C. ROAD BUILDERS &  
HEAVY CONSTRUCTION ASSOCIATION

AND

THE MINISTRY OF TRANSPORTATION

#### DISPUTE RESOLUTION PROCESS

This process has been established as a protocol to assist in resolving disputes without creating legal obligations on either party. It is not an arbitration agreement established under the *Commercial Arbitration Act*.

A Maintenance Contractor wishing to resolve a dispute of a decision or direction of the Ministry of Transportation pursuant to a contract for the provision of highway maintenance may elect to use the Dispute Resolution Process as follows:

##### Part 1 - Local Resolution

1. The Contractor and the local District Manager Transportation meet to discuss and attempt to resolve the dispute.
2. If there is no resolution within 5 calendar days of this meeting, the Contractor sets out his position and proposed resolution in writing in a format similar to Form A attached, stating the applicable contract and License articles or clauses involved, and forwards the same to the local Regional Director.
3. The Regional Director, on behalf of the Ministry, must provide a written response in a format similar to Form B attached, within 14 calendar days of receipt of the Contractor's proposal, not including statutory holidays. This response must either;

- (a) indicate agreement with the Contractor's position and proposed resolution; or
  - (b) propose an alternative to the Contractor's resolution with written reasons for the alternative; or
  - (c) reject the Contractor's resolution with written reasons for the rejection.
  - (d) If the Ministry fails to provide a written response within this time period, the Contractor can immediately file a dispute with the Dispute Review Panel.
4. If either 3(b) or 3(c) above occur, the Contractor may either accept the Ministry's response, or file a dispute with the Dispute Review Panel.
  5. Time limits may be extended by mutual written agreement, but extensions cannot exceed, an additional 14 calendar days in total.

## **Part II - Request for Dispute Review Panel**

When a dispute is not resolved at the local level and the Contractor wishes to file a dispute with the Dispute Review Panel, the following process is to be followed:

1. The request to convene a meeting of the Dispute Review Panel will be in writing and submitted on a Form A attached.
2. The request will be sent to the Secretary, Dispute Review Panel, Ministry of Transportation, P.O. Box 9850 Stn Prov Govt, Victoria, B.C. V8W 9T5 Attention: Director, Rehab. and Maintenance, with a copy to the B.C. Road Builders & Heavy Construction Association.
3. The Secretary will notify the Director, Rehab. and Maintenance, and the Regional Director within whose area the dispute is located, that a Dispute Review Panel is being established.
4. The Regional Director will state the Ministry position in a format as shown in Form B, and forward same to the Secretary for distribution to the Dispute Review Panel.
5. The Secretary will establish a Dispute Review Panel according to the conditions outlined in Part III, Dispute Resolution and Review Guidelines.
6. If the dispute is resolved directly between the Contractor and the Ministry prior to the convening of a Panel, then upon both the Ministry and the Contractor advising the Secretary in writing that the dispute is resolved, the dispute will be deleted from the Panel's agenda.

### Part III - Dispute Resolution and Review Guidelines

1. Principles of Dispute Resolution Process and Dispute Review Panel
  - (a) promote positive working relations;
  - (b) arrive at fair and equitable solutions to the disputes that are available within the contract;
  - (c) settle disputes in a prompt, effective, and amicable manner;
  - (d) while a dispute is being reviewed, contractors will continue to execute the work on the understanding that, if a Panel rules in the Contractor's favor, any remedies due the Contractor and supported by detailed records will be adhered to by the Ministry. The Panel will determine the effective date of remedies due to the Contractor based on evidence presented in the Review;
  - (e) the Contractor and the Ministry agree to abide by this dispute resolution process until the last 2003-2004 highway maintenance contract has terminated including those for Service Areas 11 and 20. A review of the Dispute Resolution Process can be requested at any time by either party;
  - (f) future guidelines changes may be recommended by a Panel and sent back to the joint Ministry and Contractor subcommittee on dispute resolution;
  - (g) throughout the dispute resolution process it is expected that both parties will continue to dialogue and seek remedies between them and not solely rely on the Dispute Review Panel for resolution;
2. Membership of Panel
  - (a) 2 Ministry members;
  - (b) 2 Contractors members;
  - (c) 1 Chairperson;
  - (d) 1 Secretary, non-voting member provided by the Ministry.
3. Evidence and Information for Panel Meetings
  - (a) written submission from each party;
  - (b) maintenance contract and all appended material or documents referred to therein, and all amendments;
  - (c) additional evidence as considered relevant by the Panel;

- (d) expert opinion(s) as required or limited by the Panel;
- (e) facts and/or evidence relevant to the dispute (in written or oral form);
- (f) Ministry and/or contractor records touching on matters at issue;
- (g) disputing parties to provide frank, candid and timely disclosure of all relevant facts, documents, information and photographs relevant to the dispute;
- (h) Contractor and the Ministry each have the option to provide oral evidence before the Panel and the Panel reserves the right to request verbal presentations from either party; and
- (i) decisions made by a Panel will be based upon evidence submitted at a Panel hearing. The only additional evidence a Panel is entitled to consider will be that derived from site visits if required.

#### 4. Administration of Dispute Resolution Process

- (a) The Panel is to convene as required if there are any disputes to be resolved;
- (b) All disputes to be filed with the Ministry - Attention: Secretary Dispute Resolution, with copy to B.C. Road Builders & Heavy Construction Association - Attention: President. These submissions must be presented 14 calendar days in advance of a Panel meeting date so that evidence can be reviewed;
- (c) The Secretary provides only administrative services and will not vote on Panel decisions. Administration will include organizing documents, arranging for meeting rooms, mail out dispute information and requests to Panel members, mail out decisions to disputing parties, and other matters of an administrative, not decision making, character;
- (d) Chairperson writes Panel decisions;
- (e) Whenever possible existing Ministry, BC Road Builder & Heavy Construction Association or Contractor facilities to be used for meetings unless Panel members mutually agree to meet elsewhere;
- (f) In filing a dispute, a Contractor agrees to follow this dispute resolution process to its completion and abide by the decision if accepted;
- (g) When a dispute is filed, the Ministry agrees to follow the Dispute Resolution Process to its completion and abide by the decision if accepted; and
- (h) The Panel reserves the right to limit the number of disputes being heard to a maximum of three, in order of submission, at any given meeting. However, if the Panel feels that more can be dealt with at a single meeting, then additional disputes in order of submission can be heard.

## 5. Panel Members

- (a) The Director, Construction and Maintenance Branch, or his designate, will be a permanent Ministry Panel member. In addition, the Ministry will create a roster of Senior Managers. The second Ministry Panel members will be selected by the Secretary from this roster on a rotational basis;
- (b) The Chairperson of the Maintenance Sector of B.C. Road Builders & Heavy Construction Association, or his designate, will be a permanent Contractor Panel Member. In addition, the Contractors will create a roster of Senior Manager Panel Candidates. The second Contractor Panel member will be selected by the Secretary from this roster on a rotational basis;
- (c) The Secretary will select a Chairperson for each Panel meeting. The Chairperson shall be an independent, third party individual agreeable to the Director, Rehab. and Maintenance, and to the Chairperson of the Maintenance Sector;
- (d) New Panel members, except those designated permanent, will be appointed for each Panel hearing;
- (e) Substitute Panel members will be allowed whenever a conflict of interest is apparent, e.g. dispute from a Panel member's service area and/or region. Replacements are to be candidates selected according to the process identified above; and
- (f) If an issue before a Panel member relates to a matter which, in the case of a Contractor, raises a conflict of interest or in the case of the Ministry relates to a decision made by the Panel member, then that Panel member will appoint a designate to hear the matter in their place.

## 6. Meetings

- (a) The Panel shall convene with all four (4) members plus the Secretary and Chairperson in attendance;
- (b) The Chairperson shall conduct and facilitate the hearings of the Panel, and in the event of a tie, the Chairperson will cast the deciding vote;
- (c) At a Panel Meeting:
  - (i) the Contractor will present his case including any supporting evidence, documentation or witnesses. After the Contractor has finished, the Ministry will present its case including any supporting evidence, documentation or witnesses;
  - (ii) the Contractor and/or the Ministry representative may each question the other on any matter directly related to the dispute;

- (iii) the Panel may question either the Contractor or the Ministry Representative about any matter deemed relevant;
  - (iv) the Contractor will make any concluding remarks together with their proposed resolution of the dispute. After the Contractor has finished, the Ministry Representative will make any concluding remarks together with their proposed resolution of the dispute;
  - (v) the Panel will discuss the dispute in the absence of the Contractor and Ministry Representative and endeavor to render a decision on the day of the Panel hearing;
  - (vi) the Panel cannot delay a decision or request additional information, unless such delay or information is related to the need for a job site visit and the panel unanimously approves such a delay, in which case a decision will be provided within the time limits established herein; and
  - (vii) the Panel must reach a majority decision.
- (d) Following a "Decision" of the Panel, the Chairperson will set the decision in writing and have the Secretary communicate the decision to the parties.

## 7. Costs

- (a) The Ministry and Contractor will pay all normal out-of-pocket costs for respective Panel members. Such expenses will include travel, meals, hotel and other reasonable costs incidental to the hearing;
- (b) A per diem will be paid to the Chairperson together with the out-of-pocket expenses, and will be paid equally by the Ministry and the Contractor;
- (c) Unusual expenses such as site visits or third party costs will not be paid unless reasonably necessary and agreed by the parties prior to any costs that are incurred. Expenses for site visits shall be paid as outlined in a) and b) above and third party expenses will be shared equally by the Ministry and the Contractor;
- (d) To administer the Contractor's side of expenses, B.C. Road Builders & Heavy Construction Association will charge travel expenses for Contractor Panel members and the Chairperson to the Contractors whose disputes are heard at a given Panel meeting. Such charges will be payable pro rata by each Contractor with a dispute. Third party costs and site visit expenses for a specific dispute will not be shared pro rata but will be charged to the specific Contractor involved.

## 8. Panel Decisions

- (a) The decision making powers of the Panel will be limited to the interpretation of the Maintenance Contract and all appended material or documents referred to therein. The Panel will not establish amendments to the Maintenance Contract or related material;
- (b) The Panel Chairperson will provide a written response to disputes within 14 calendar days of a dispute being heard. The Chairperson will communicate decisions by fax to (250) 356-7276, or by email, followed by regular mail;
- (c) Within 14 days of the Panel decision, the parties will either enter into a written Agreement to be bound by the terms of the Panel's decision or notify the other party that they don't accept the Panel's decision and will pursue other remedies. If accepted, the Ministry will, within an additional 14 calendar days, distribute the results of a Panel's decision to all regions and contractors;
- (d) Panel members agree to keep the details of the dispute and any Panel decision confidential until the parties have agreed to accept or reject the Panel's decision;
- (e) If the Panel's decision results in the need for compensation to the Contractor, then it will be handled under the forms of the Contract within the scope of Articles 5, 6, 7 or Article 12, Schedule 3, Part 2, Emergency Service and Additional Maintenance Services - Fees. The Panel will indicate in its decision which Articles are applicable; and
- (f) By mutual agreement, time limits may be extended.

"FORM A"

The Secretary  
Dispute Review Panel  
Maintenance Programs  
Ministry of Transportation  
P.O. Box 9850 Stn Prov Govt  
Victoria, British Columbia  
V8W 9T5

Dear Sir/Madam:

Please proceed with the establishment of a Dispute Review Panel for

A) Service Area: \_\_\_\_\_ Region: \_\_\_\_\_

B) Nature of Dispute: State Contract of License Clause, Articles or Maintenance Services Clause in dispute (use additional sheets if necessary).

C) Proposed Resolution: (use additional sheets if necessary)

D) Contractor contact for this dispute:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

E) District Manager Transportation for this Service Area:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

F) We acknowledge having received and read a copy of the Dispute of Resolution Process Part I, Part II and Part III and agree to abide by its terms and conditions.

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Date



"FORM B"

The Secretary  
Dispute Resolution Panel  
Maintenance Programs  
Ministry of Transportation  
P.O. Box 9850 Stn Prov Govt  
Victoria, British Columbia  
V8W 9T5

Dear Sir/Madam:

RE: Dispute  
Service Area \_\_\_\_\_

The Ministry's position on the dispute is the following:

A)

B) Nature of Dispute: \_\_\_\_\_

C) Ministry position and proposed resolution:

D) Regional Director

Name:

Address:

Phone No: \_\_\_\_\_ Fax No: