

On **THURSDAY, APRIL 1, 2021**, the **CAPITAL MANAGEMENT COMMITTEE** of the Greater Orlando Aviation Authority met in Conference Room Lindbergh of the Greater Aviation Authority offices in the main terminal building at the Orlando International Airport (MCO), One Jeff Fuqua Boulevard, Orlando, Florida. Chairman Phillip N. Brown called the meeting to order at 3:30 P.m. The meeting was posted in accordance with Florida Statutes and a quorum was present in the room.

Committee members present, Phillip N. Brown, Chairman  
Thomas Draper, Senior Director of Operations  
Davin Ruohomaki, Senior Director of Construction and Engineering

Also present, Kathleen Sharman, Chief Financial Officer  
Edward Philpot, Legal Counsel, Nelson Mullis  
David Brown, Legal Counsel, Nelson Mullins (via phone)  
Dan Gerber, Interim General Counsel (via phone)  
Larissa Bou, Recording Secretary

*For individuals who conduct lobbying activities with Aviation Authority employees or Board members, registration with the Aviation Authority is required each year prior to conducting any lobbying activities. A statement of expenditures incurred in connection with those lobbying instances should also be filed prior to April 1 of each year for the preceding year. Lobbying any Aviation Authority Staff who are members of any committee responsible for ranking Proposals, Letters of Interest, Statements of Qualifications or Bids and thereafter forwarding those recommendations to the Board and/or Board Members is prohibited from the time that a Request for Proposals, Request for Letters of Interests, Request for Qualifications or Request for Bids is released to the time that the Board makes an award. Lobbyists are now required to sign-in at the Aviation Authority offices prior to any meetings with Staff or Board members. In the event a lobbyist meets with or otherwise communicates with Staff or a Board member at a location other than the Aviation Authority offices, the lobbyist shall file a Notice of Lobbying (Form 4) detailing each instance of lobbying to the Aviation Authority within 7 calendar days of such lobbying. Lobbyists will also provide a notice to the Aviation Authority when meeting with the Mayor of the City of Orlando or the Mayor of Orange County at their offices. The policy, forms, and instructions are available in the Aviation Authority's offices and the web site. Please contact the Chief Administrative Officer with questions at (407) 825-7105.*

#### **MINUTES**

1. The Committee was in consensus to approve the meeting minutes of March 18, 2021, as written.

#### **RECOMMENDATION TO ACCEPT REVISION TO DISPUTE REVIEW BOARD (DRB) SPECIFICATIONS TO BE IMPLEMENTED ON AVIATION AUTHORITY CONSTRUCTION PROJECTS**

2. Mr. Philpot presented the item.

The Aviation Authority includes a DRB process in specifications on construction projects of critical concern. This process is designed to assist the Aviation Authority and contractors to resolve disputes at the project level before resorting to litigation. In 2016, the Aviation Authority's DRB specifications were reviewed and revised by this Committee to update them and incorporate language to conform to best practices.

At the request of construction staff, the DRB specifications have been reviewed to incorporate additional comments and revisions gathered since the last major revision. The revisions were provided to the Committee as Exhibit A and Exhibit B (copies on file), which show the proposed redline modifications to the DRB specifications.

The revised specification provide recommended updates to the Aviation Authority's DRB specification to formally incorporate the Committee's 2016 changes, along with improvements generated from comments by construction staff and legal counsel. These revisions include, among other things, the following:

- Streamlining the DRB process to clarify the participants and the parties who may raise disputes. The previously-approved DRB specification contemplated roles for other project participants in the DRB process (to make the DRB process compatible for "super DRBs" as are used on extremely large complex projects). The more traditional DRB approach is focused on the Owner-Contractor relationship, and the proposed revisions bring the DRB specification in line with that.
- Clarifying the qualification and conflict rules for DRB members, along with revisions to the selection and replacement process. Among other improvements, the previously-approved DRB specification did not contemplate DRB members serving on multiple DRB panels for the Aviation Authority, and that is now addressed in the proposed revision. The proposed revision also expands removal and replacement of DRB members.
- Simplifying and clarifying the procedures for regular DRB meetings and DRB hearings (this includes consolidating separate specification sections dealing with these matters).

## MINUTES OF THE APRIL 1, 2021, CAPITAL MANAGEMENT COMMITTEE MEETING

### **RECOMMENDATION TO ACCEPT REVISION TO DISPUTE REVIEW BOARD (DRB) SPECIFICATIONS TO BE IMPLEMENTED ON AVIATION AUTHORITY CONSTRUCTION PROJECTS (CON'T)**

- Updating statutory public records language.
- Making terminology uniform throughout the specification, along with other formatting revisions.

The revisions are more particularly set out in the attached redline.

There exist at least two alternatives: (1) maintain the DRB process in its current form; or (2) maintain the DRB specification in a modified form, taking into account the recommended revisions in this document.

The fiscal impact is undetermined at this time, as it will depend on project-specific details (such as the number of disputed claims and issues), which is difficult to estimate in the abstract. Revising the DRB specifications or Aviation Authority policy should not increase costs to implement or carry out the DRB process.

Additionally, Mr. Philpot noted that, since the revisions were drafted, some more revisions have been provided. It was suggested that the header on Page 1 be revised to read "THIS SECTION ONLY TO BE UTILIZED WITH CONCURRENCE OF THE SENIOR DIRECTOR OF CONSTRUCTION AND ENGINEERING".

Moving on, Mr. Philpot indicated that there was a question brought forth regarding when the DRB process should be used on individual construction projects. It was Mr. Philpot's suggestion that counsel and staff take a look at the appropriate usage of DRB. Once they have discussed, they will make a recommendation to the Committee in light of what is stipulated in the existing Aviation Authority policy. It will then be determine whether the policy should be revised to incorporate a procedure by which staff has to present to the Committee to implement DRB on an individual construction project.

Chairman Brown asked for a summary of the major revisions referenced during Mr. Philpot's presentation and described in the Exhibits provided. Mr. Philpot summarized some of the revisions as detailed in Exhibit B (copy on file).

Continuing, Chairman Brown asked for clarification regarding the contact information provided in the Exhibit for the Custodian of Public Records. Ms. Bou provided the correct contact information, which was noted by Mr. Philpot to include as part of the revisions to the specifications.

Chairman Brown remarked that under Section VIII - "Public Records", there is a requirement for the DRB members acting on behalf of the Owner to adhere to Section 119.070(1)(a), *Florida Statutes*. Mr. Philpot made a point to comment that it is an unresolved question whether DRB members are actually acting on behalf of the Aviation Authority for the purposes of the Florida Public Records law. He indicated that there is appropriate qualifying language at the beginning of the referenced paragraph. Mr. Philpot stated that part of the recommended action is the ability to update the statutory language, as needed.

Chairman Brown asked if there were any further comments or questions. Mr. David Brown posed various questions regarding the use of this process from a financial standpoint; distinction in methodology; the involvement of subcontractors; and reluctance from the construction community as it relates to the process. Lengthy discussion followed with regards to Mr. David Brown's questions.

Based on the discussion, Mr. Philpot reiterated his suggestion to have the Committee review the policy to ensure there is appropriate approval prior to implementing a DRB on any construction project. Mr. Philpot further stated that if a contractor has to be brought to a DRB involuntarily, then the process is not going to work. However, if this is a process implemented in the specification at the beginning of a project, then there is a possibility it would work.

Discussion ensued regarding Walbridge's litigation and how it differs from other projects.

Mr. Philpot respectfully requested that the Committee consent to approve the following amended recommended action: (1) consider the attached revisions to the Dispute Review Board specification and authorize their use in substance - subject to revisions in form and to address statutory requirements (revisions to statutory public records disclosures), in

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concurrence with legal counsel; (2) accept the revision to the specification to identify the Senior Director of Construction and Engineering as the party who authorizes use of the Dispute Review Board on specific construction projects; and (3) authorize legal counsel to work with staff to review the policy and confirm the appropriate times when a Dispute Review Board is required, followed by legal counsel returning to the Committee with confirmation or an appropriate revision to the policy to address any concerns.

**ADJOURNMENT**

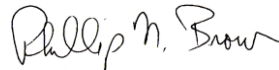
3. There being no further business to be considered, Chairman Brown adjourned the meeting at 3:52 p.m.

*(Digitally signed on March 26, 2021)*



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Larissa Bou  
Recording Secretary



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Phillip N. Brown  
Chairman