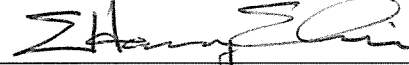


**SAN FRANCISCO PUBLIC UTILITIES COMMISSION  
WATER SYSTEM IMPROVEMENT PROGRAM  
CONSTRUCTION MANAGEMENT PROCEDURES**

**SECTION: WSIP CONSTRUCTION  
MANAGEMENT**

**APPROVED:**



**PROCEDURE NO.: 019  
TITLE: DISPUTE REVIEW BOARD  
(DRB)**

**DATE: 08/25/09**

**REVISION NO.: 1**

**1.0 Policy**

Dispute Review Boards (DRBs) are required for each WSIP Construction Contract with a value equal to or greater than \$20 million. For Contracts with a value equal to \$10 million to under \$20 million, a DRB is optional, but a Dispute Resolution Advisor (DRA) is required.

This CM Procedure applies to all personnel working on the Water System Improvement Program (WSIP) to the extent that their Work is affected by these WSIP Construction Management (CM) Procedures and does not conflict with specific San Francisco Public Utilities Commission (SFPUC) policies or the contract under which the Work is executed.

**2.0 Description**

This CM Procedure establishes the requirements for establishing and operating a Dispute Review Board (DRB). When requested, the DRB will assist the City and Contractor by facilitating the timely resolution of disputes related to the performance of Work.

**3.0 Definitions**

**3.1 Dispute**

A Dispute is a disagreement, related to the performance of the Work under the specified Contract between the City and the Contractor.

**3.2 DRB Hearing**

A DRB Hearing is a formal hearing before the DRB, initiated by either the WSIP Project CM or the Contractor, to review a dispute eligible for consideration under the Contract. The DRB Hearing results in a DRB Report.

### **3.3 Dispute Review Board (DRB)**

The Dispute Review Board is a three-member board, each of whom is signatory to the DRB Three-Party Agreement. The DRB consists of one member selected by the WSIP Project CM, one member selected by the Contractor, and a third member selected by the first two members. The third member acts as Chair for all DRB activities.

### **3.4 DRB Three-Party Agreement**

The DRB Three-Party Agreement is an agreement, appended to the Document 00803/DRB Specification, to which the individual DRB members, the Project CM, and the Contractor are parties; and, which establishes the DRB for this Project, consistent with the requirements of the Specification.

### **3.5 DRB Membership Requirements**

DRB Membership Requirements describe the professional experience and qualifications, criteria and limitations for membership along with the Canon of Ethics recommended by the Dispute Resolution Board Foundation (DRBF). The requirements are outlined in Division 0 Specification Section 00803/DRB.

### **3.6 DRB Report**

The DRB Report is a non-binding written recommendation issued by the DRB as a result of a DRB Hearing. DRB Reports are admissible to subsequent litigation or other dispute resolution proceedings.

### **3.7 Parties Indirectly Involved**

The construction managers, architects/engineers, sub-consultants, counsel, consultants, or subcontractors and suppliers of all tiers on the Project.

## **4.0 Responsibilities**

### **4.1 Project Construction Manager (Project CM)**

The Project CM manages and administers the project construction contracts and serves as prime point of contact between the Contractor, the City and external stakeholders comprised of community residents, local government officials and agencies, schools, churches, businesses, and local community organizations, among others.

4.1.1 The Project CM nominates possible candidates for DRB, and selects one member to represent the Project CM. He/she prepares for and participates in the regularly scheduled DRB meetings.

## **4.2 Contractor**

The Contractor is the entity awarded the Contract to perform the Work. The Contractor identifies possible nominees for DRB, and selects one member to represent the Contractor. He/she prepares for and participates in the regularly scheduled DRB meetings.

## **4.3 DRB Panel Members**

The DRB Panel Members are responsible for implementing the DRB process as outlined in Section 5.0. The process includes formulating rules of operation; regularly scheduling site visits; holding DRB Hearings as required; and, issuing formal written reports.

## **5.0 Implementation**

Reference Attachment 019-1.

### **5.1 DRB Panel Selection**

5.1.1 During the Mobilization Phase the Project CM identifies potential DRB candidates from the SFPUC DRA/DRB Database and Resource / Contact List, based on professional experience, training and project requirements (reference Division 0, Specification Section 00803/DRB and Attachment 019-2).

The Project CM meets with internal team members to review credentials and identify their selected nominee(s). It is advisable to interview nominee(s) to ensure clear understanding of the project and compatibility with internal team members.

5.1.1.1 The Project CM provides Contractor access to the Database and Resource / Contact List.

5.1.1.2 The Project CM and Contractor may agree to each develop a list of possible nominees, rather than one, for consideration by the other party.

5.1.2 Within Fifteen (15) calendar days before Notice-to-Proceed (NTP) Date, the Project CM and the Contractor exchange their respective DRB nominees' full name and contact information; resumes with applicable certifications; experience and qualifications; and, disclosure statements.

5.1.3 Within Thirty (30) calendar days after NTP, the DRB members mutually select a third member to serve as Chair and provide to the Project CM and the Contractor.

### **5.2 DRB Meeting Protocol**

5.2.1 The DRB Chair convenes the first DRB meeting, and the Project CM, the Contractor and DRB members execute the DRB Third-

Party Agreement. DRB formulates its own rules of operation, consistent with recommended DRBF operation guidelines.

5.2.2 On a quarterly basis, DRB Chair schedules DRB Project site visits and meetings with Project CM and Contractor representatives. The parties may select to meet more or less frequently depending on Project scope and duration, but not less than two times in a Project year.

5.2.2.1 In advance of the DRB meetings, the Contractor provides the DRB and the Project CM with a current list of rejected Change Order Requests, rejected Requests for Deviations, Notices of Potential Claims, pending Claims, and other information, schedule, or status report.

5.2.2.2 Each meeting consists of an informal discussion and a field observation of the work in progress. The DRB may issue verbal, nonbinding advisory opinions as to items discussed at the meeting. Project CM personnel and the Contractor attend the meeting and field observation.

5.2.3 Either party may initiate review of an eligible dispute by written notice to the DRB, copied concurrently to the other party. Prior to referring dispute to the DRB, good faith negotiations must occur towards resolving differences between the Project CM and the Contractor; and, the dispute must be rejected by the Project CM and the department head.

### **5.3 DRB Pre-Hearing**

5.3.1 The Project CM and the Contractor each prepare a pre-hearing submittal and transmit it to all three members of the DRB and the other party.

5.3.2 If pre-hearing submittal has not been prepared per the original schedule, the DRB may proceed with the Hearing or may reschedule it. In the event that some or all of the representatives of either party fails to appear at the appointed time of a DRB Hearing, the DRB will proceed with the Hearing.

5.3.3 Not less than Thirty (30) calendar days prior to the due date for delivering the pre-hearing submittal, either party may request in writing the use of outside experts. Upon receipt of this disclosure, the other party can secure outside expert services. The party securing outside expert services bears the costs of the services. The DRB can also secure outside experts, after receiving approval from the Project CM and the Contractor. Those costs are borne equally by the Project CM and the Contractor.

#### **5.4 DRB Hearing**

- 5.4.1 If the Contractor seeks a recommendation as to additional money under the Contract, and if the DRB issues a DRB Report finding entitlement, the Project CM may request a review or audit of the Contractor's project and accounting records within Fifteen (15) calendar days of the DRB Report. The City selects and bears the cost of the individual or firm performing the review.
- 5.4.2 DRB Chair convenes Hearing and Project CM and Contractor present respective positions to the DRB.

#### **5.5 DRB Report**

- 5.5.1 Upon conclusion of the DRB Hearing, the DRB meets in private to formulate its recommendations. Every effort is made to reach a unanimous recommendation. Within Fourteen (14) calendar days of DRB Hearing, the DRB issues a formal written Report with recommendations for resolution of the dispute, signed by all DRB members.
- 5.5.2 Within Ten (10) calendar days following receipt of the Report, either party may request clarification of the Report.
- 5.5.3 Within Ten (10) calendar days following receipt of the Report, when new information is obtained or developed that was not know at the time of the Hearing, or when, in the party's opinion, the DRB misunderstood or failed to consider pertinent facts of the dispute, either party may request reconsideration of the Report.
- 5.5.4 Within Thirty (30) calendar days of receipt of the Report or following receipt of responses to requests for clarification or reconsideration, the Project CM and the Contractor submit their written acceptance or rejection of the recommendation(s) contained in the Report concurrently to the other party and to the DRB.
- 5.5.5 If the parties are able to settle their dispute with the aid of the DRB Report, the Project CM and Contractor promptly accept and implement the settlement of the parties.

### **6.0 Other Procedural Requirements**

#### **6.1 Subsequent Proceedings**

- 6.1.1 In the event that the Dispute Review Process does not result in a resolution of a dispute, the City or Contractor may pursue other contractual remedies.
- 6.1.2 In any subsequent litigation or similar proceeding arising out of a dispute heard by the DRB, only the final DRB Report may be admissible as evidence. Neither party may call a member of the DRB as a witness in any subsequent proceeding.

## **6.2 Review of Compensation**

6.2.1 If the parties cannot agree on compensation within Thirty (30) calendar days of the acceptance by both parties of the settlement, either party may request the DRB to make a recommendation regarding compensation.

6.2.2 If the Contractor seeks a recommendation from the DRB as to additional compensation under the Contract, the Project CM may request a review or audit of the Contractor's project and accounting records within Ten (10) calendar days of the Contractor's request. The Project CM will select and bear the cost of the individual or firm performing the review or audit.

## **6.3 Compensation of the Dispute Review Board**

Fees and expenses of all three DRB members are shared equally by the Project CM and the Contractor as set forth in the DRB Agreement. The Contractor pays the DRB members' invoices after approval by both parties. The Project CM reimburses the Contractor for 50% of such invoices, with no mark-up.

6.3.1 Standard hourly rates have been established. Check with the responsible Regional Construction Manager (RCM) for guidance.

## **7.0 References**

### **7.1 Technical Specifications**

No. 00803/DRB

No. 00803/DRB/TPA Specification

### **7.2 CM Procedures**

No. 031 Dispute Resolution Advisor

## **8.0 Attachments**

019-1 Dispute Review Board Flow Chart

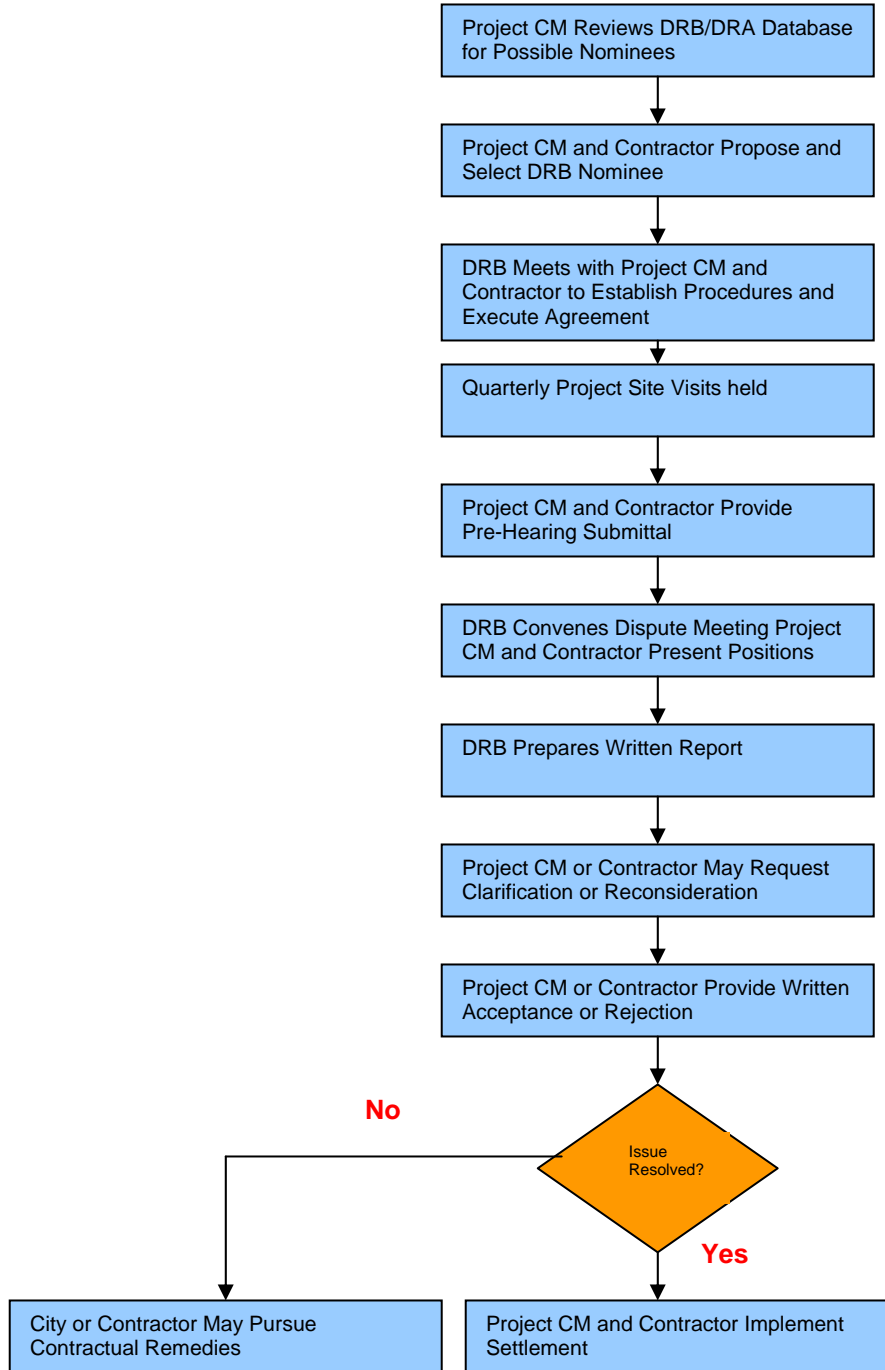
019-2 DRA/DRB Database, Resources and Contacts - *SAMPLE*

019-3 DRB Three-Party Agreement, Division 0 Specification Section 00803/DRB/TPA

019-4 Documents Distribution List for CMP No. 019

019-5 Revision Control Log

## Attachment 019-1 Dispute Review Board Flow Chart



## Attachment 019-2 DRA/DRB Database, Resources and Contacts - **SAMPLE**

### Dispute Resolution Advisor / Dispute Review Board List (AAA/Caltrans/DRBF/JAMS) - **SAMPLE**

Name	Brief Summary of Experience	Job/ Residence Travel	Telephone No.	E-mail	Resume	Comments
Allen, Lowell	10 years of experience DRBs CALTRANS construction projects.	Districts 1 through 4 and 10	(707) 443-3893	lcaeng@sbcglobal.net	<u>Yes</u>	DRA Trg. /Bridges
Anderson, Norman	DRB member/project neutral on 80+ projects in western USA. Served as either Contractor's or Agency's representative in dispute resolution. Heavy, Highway, Building Construction.	Anywhere in California	(360) 754-3819	normananderson@msn.com	<u>Yes</u>	DRA Trg. Lives in WA; Bay Bridge; primarily works on DOT projects; 3 combined sewer/tunnel projects; pump station. <b>R</b>
Baker, Bill	Civil Engineer: Arbitrator/Mediator in construction industry for nearly 40 years. DRB Member on 40+ projects, over 20 as Chair on Caltrans projects. Pipelines, seismic upgrade utility systems, tunnels, bridges.	Anywhere in California	(707) 942-5886	wbaker@napanet.net	<u>Yes</u>	DRBF, DRA Trg., AAA; PUC ok; \$325/hr.: <b>R</b>
Bauer, Carl F.	50 years' experience in Construction Industry, including 30 in executive positions. Served on 26 DRBs, 6 as Chairman. Active in ACG, Beavers; Heavy, Highway, Building Construction.	Anywhere in California	(916) 944-2843	c.bauer@sbcglobal.net	<u>Yes</u>	DRBF, DRA Trg.
Carlson, William	DRBF: 30+ years in heavy, highway, marine and building construction.	Escondido, CA	(760) 751-2081; cell: (760) 715-1376	wjccal@aol.com	<u>Yes</u>	DRA Trg. <b>R</b>
Dooley David	Attorney, Construction Law, Arbitrator for AAA, DGS, PWCAC.	Lives in Mill Valley	(415) 383-0741			DRB /DRA Trg.
Graham, Bob	42 years experience in design, construction, traffic, engineering, and building construction, 37 years with Caltrans, 5 years with Bechtel – Service on 7 DRBs.	Anywhere in California	(650) 967-9115	grahamre@comcast.net	<u>Yes</u>	DRB Trg. <b>R</b> DRB member on storm water treatment system
Lewis, Richard	32 years with Granite Const., including 3 Design-Build highway, dam and lock projects. Served on 23 DRBs, 12 as Chair on public works projects for 7 agencies.	Lives in Escondido may not want to travel to No. CA	(760) 839-0859	dicklewis1@cox.net	<u>Yes</u>	DRB Ch 12 projects. Design Build projects
Madewell, Charles	<b>No experience.</b> DRBF: Licensed Civil Engineer; 40 years experience in structures, heavy civil, industrial as a contractor and owner's representative. Dillingham Construction Specialties: water and wastewater treatment facilities, underground pipelines, water dams, other.	Lives in Danville, CA	(925) 216-3429	cjmadewell@sbcglobal.net	<u>Yes</u>	DRB Chair Trg.; no DRB exp. <b>R</b>
Reading, Ron	40 years progressive experience in heavy civil engineering construction with an extensive background in project management.	Anywhere in California	(925) 820-9131	r-mreading@msn.com	<u>Yes</u>	DRA Trg.
Thomas, Hugh	Involved with construction contract dispute resolution since 1977. Served on 55 DRBs, Chair for 20 of the DRBs. Primary experience Caltrans.	Anywhere in California	(530) 673-9788	thomashu@comcast.net	<u>Yes</u>	DRB/DRA and Chair Trg. <b>R</b>
<b>Note:</b> Updated 12/23/08. <b>R:</b> Responded to SFPUC / CMB Survey. Sources: Dispute Resolution Board Foundation (DRBF), Caltrans, American Arbitration Association (AAA), JAMS and Contractor Associations (AGC, EUCA).						



**Attachment 019-3**  
**Page 1 of 2**  
**DRB Three-Party Agreement, Division 0**  
**Specification Section 00803/DRB/TPA**

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**DOCUMENT 00803/DRA/TPA**  
**CITY AND COUNTY OF SAN FRANCISCO**  
**DISPUTE RESOLUTION ADVISOR**  
**THREE-PARTY AGREEMENT**

THIS AGREEMENT, dated for convenience as of the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, is between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "PUC"), \_\_\_\_\_ (the "Contractor"), and the following individual: \_\_\_\_\_ (the "DRA").

**Recitals**

- A. The City, by and through its PUC, has awarded to the Contractor public work Contract No. \_\_\_\_\_ (the "Contract") for the construction of a public work known as \_\_\_\_\_ (the "Project").
- B. Included as part of the Contract is Document 00803/DRA, implementing a Dispute Resolution Advisor procedure for the Project (the "DRA Specification").
- C. The DRA has been selected in conformance with the DRA Specification.

**Agreement**

NOW THEREFORE, the City, the Contractor, and the DRA hereby agree as follows:

- 1. **Compliance with Specification.** The DRA agrees to be bound by the terms of the DRA Specification and to perform the required duties strictly as set forth in the DRA Specification. The DRA Specification is incorporated herein by reference as if fully set forth.
- 2. **Compensation.** The City and the Contractor agree that the DRA shall be compensated for his/her individual Services as DRA at a billing rate of \$\_\_\_\_\_ per hour. Compensation shall be paid at the stated billing rate, applied to travel time and reasonable study/consultation time, time spent in Dispute Meetings, and preparation of any written Report as set forth in the DRA Specification. Included in the billable rate shall be routine office expenses, such as secretarial, administrative, report preparation, telephone, computer, and internet connections.
- 3. **Additional Compensation.** Not included in the billable rate, and considered additional compensation, shall be any travel expenses, outside reproduction costs, and postage costs. Travel expenses must be approved in writing by both the City and the Contractor prior to being incurred. Outside reproduction and postage expenses for DRA Reports and other written communications may be billed at cost.
- 4. **Invoices.** The DRA shall submit to the Contractor invoices for work completed (a) not more often than once per month; (b) based on the agreed billing rate and conditions and on the number of hours expended, together with direct, non-salary expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts; and (c) accompanied by a description of activities performed daily during the invoice period.
- 5. **Confidentiality.** The DRA shall not divulge any information acquired during DRA activities without obtaining prior written approval from the City and the Contractor.
- 6. **Recordkeeping.** The DRA shall maintain cost records pertaining to this Agreement for inspection by the City or the Contractor for a period of three years following the end or termination of this Agreement.

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TITLE

**Attachment 019-3**  
**Page 2 of 2**  
**DRB Three-Party Agreement, Division 0**  
**Specification Section 00803/DRB/TPA**

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7. **Assignment.** No party to this Agreement shall assign any duty established under this Agreement or the DRA Specification.
8. **Termination.** This Agreement may be terminated by mutual agreement of the City and the Contractor at any time upon not less than 10 days written notice to the DRA. The DRA may be terminated only by agreement of both the City and Contractor. If the DRA resigns, is unable to serve or is terminated, he/she will be replaced within four weeks in the same manner as he/she was originally selected under the DRA Specification. This Agreement shall be amended to indicate the member replacement.
9. **Legal Relations.** The parties to this Agreement expressly acknowledge that the DRA, in the performance of his or her duties under this Agreement and the DRA Specification, is acting in the capacity of an independent agent and not as an employee of the City or the Contractor. The DRA shall not participate in any subsequent dispute proceedings relating to the Contract or the Project. The City and Contractor release the DRA from any and all liability, claims, demands, actions and causes of action arising out of or resulting from the findings and recommendations of the DRA. The release set forth above excludes any and all liability, claims, demands, actions and causes of action arising out of or resulting from fraud or willful misconduct by the DRA.
10. **Jurisdiction and Venue.** Disputes among the City, the Contractor, and the DRA arising out of this Agreement shall be brought in the California Superior Court, County of San Francisco. The Agreement shall be interpreted in accordance with the laws of the State of California. The DRA hereby consent to the personal jurisdiction of the California Superior Court, County of San Francisco.
11. **Funding Agency Review.** The \_\_\_\_\_ [Agency funding the project] has the right to review the work of the DRA in progress, except for private meetings or deliberations of the DRA.

CITY AND COUNTY OF SAN FRANCISCO  
PUBLIC UTILITIES COMMISSION

[CONTRACTOR]

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

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

DRA

BY: \_\_\_\_\_

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

BY: \_\_\_\_\_  
Deputy City Attorney

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TITLE

**Attachment 019 - 4**  
**Documents Distribution List for CMP No. 019**

The following personnel listed (by project position or responsibility) for Documents Distribution is a general guideline for specific CM Procedure. It is the responsibility of the Administration / Documents Control Specialist (ADCS) to confirm and as necessary revise this list as appropriate for the specific project needs. The Office Engineer shall approve these distribution changes.

The guideline for hard copy document distribution is follows:

1. Individual, without CMIS access, who attended a specific project meeting;
2. Individual, without CMIS access, who was mentioned or designated for action in a specific project meeting;
3. Individual, without CMIS access, who has management oversight responsibilities to ensure the implementation or completion of project action.

**SPECIAL REPORTS**

- DRB Report for Specific Project

**DISTRIBUTION**

**Project Field Personnel – Information Only, Not Distribution**

- Project CM, Field Contracts Administrator, Office Engineer, ADCS

**Construction Management Bureau**

- City Regional CM

**Program CM Consultant**

- Program CM Consultant Advisor

**Project Management Bureau**

- Project Manager, Regional PM

**Engineering Management Bureau**

- None

**Bureau of Environmental Management**

- None

**Attachment 019 - 5  
Revision Control Log**

<b>Revision No.</b>	<b>Revision Date</b>	<b>What changed?</b>
Rev 1	August 25, 2009	<ul style="list-style-type: none"><li>• Revised Section 5; corrected format</li><li>• Revised Section 7.0; added Sections 7.1 and 7.2</li><li>• Added Headers to all Attachments</li><li>• Revised Attachment 2; Reduced number of pages from 4-pages to 1-page</li><li>• Added new Attachment 4; Documents Distribution List</li><li>• Added new Attachment 5; Revision Control Log</li></ul>
Rev 0	February 5, 2009	Signed