

# Writing DRB Recommendations

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# Your 9<sup>th</sup> Grade English Teacher

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Who you didn't listen to.

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# Baseball Batting 101: Classroom Instruction Only

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# The Process of Writing

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1. Have something to say
2. Say it clearly



# Topics

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- ▶ Recommendation Formation
- ▶ Template for the Recommendation
- ▶ Project Background/Context
- ▶ Positions of the parties
- ▶ Findings
- ▶ The Recommendation
- ▶ Improving Your Writing

Having Something to Say

Saying it Clearly



# Objective of a Recommendation

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- ▶ Provides guidance to the parties with regard to who is to prevail in a dispute (who is right, who is wrong)
- ▶ Documents the recommendation

Anything else?

**“Explains Why”**



# Common Problems with Recommendations

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- ▶ Reasoning supporting the recommendation is not adequately explained
- ▶ Recommendation is poorly organized
- ▶ Positions of the parties are not fairly presented
- ▶ Specific facts and contract provisions are not cited
- ▶ Poorly written (difficult to understand)
- ▶ Recommendation is not clear or is not aligned with what has been requested



# Recommendation Formation

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- ▶ Deliberations must also include identification of key facts and contract provisions
- ▶ These “findings” should be noted by the DRB in development of the recommendation

Get the relevant facts and contract provisions organized before you begin writing.



# Keep Track of the Facts and Contract Provisions During Deliberations

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**Fact I** Evaporation counter measures were not in place during concrete placement  
Source: Statements by concrete foreman and inspector at hearing.

**Contract Provision I:** “ when the forecasted or actual wind speed exceeds 10 mph, evaporation counter measures are required.”  
Source: 2007 Standard Specification for Roads and Bridges,  
Section 400-16 Curing Concrete, Subsection 400-16.1 General



# DRB Members Often Agree on the Recommendation but Disagree on the Why

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- ▶ Chairman must be the referee
- ▶ Relevant facts and contract provisions to be included
- ▶ Adding more weight to selected items can be a problem

As Chairman, get these differences between DRB members resolved before writing?



# Suggested Recommendation Organization

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1. Introduction / Project Description
2. Contractor's Position
3. Owner's Position
4. Findings
  1. Facts
  2. Contract provisions
5. Analysis/Recommendation
6. Appendix ( if needed )



# Introduction / Project Description

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- ▶ Project personnel are not your only readers
- ▶ Others readers need a brief orientation to establish the context
- ▶ What would I need to know to be oriented? (in a paragraph or two?)
  - ▶ General description of the type of project and scope
  - ▶ Location
  - ▶ Description of the dispute



# Positions of the parties

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- ▶ Full position papers can be hundreds of pages in length.  
What do you include?
- ▶ Key points supporting their position
- ▶ Goal is to fairly represent their stated position
- ▶ Include items from both position papers and hearing presentations

You want each party to believe that the DRB fully understood their position. Acceptance of the recommendation depends on it.



When you recommend against a party,  
they will not be happy, but they will get over it.

However, if they believe that you did not  
understand their position (and you recommend  
against them), you will not be forgiven.



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What criteria should be used to decide what position points (facts and specs) from the position are included?

## Open Discussion



# Positions of the Parties (Dos and Don'ts)

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- ▶ Don't cherry pick. Be careful about selecting some items in the position and omitting other items.

*“I just include the stuff that makes sense and exclude the weak points.” What's wrong with this?*

- ▶ It is often better to copy and paste key text. (Ask for file copies of position papers)
- ▶ Narrative formats can be used but a point by point format may provide more clarity
- ▶ Include referenced contract language
- ▶ Provide appropriate citations for specific contract references and facts (footnotes work well)



# A Sample Introduction to the Position Section

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- ▶ “The following summary of the Contractor’s position is based upon written materials submitted to the Board and upon the hearing presentation.”



# Sample Position Section Format

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## **FDOT Position**

The following summary of the FDOT's position is based upon written materials submitted to the Board and upon the hearing presentation.

## **Key Points**

- Compliance with applicable laws , ordinances and regulations is required by contract  
Specification section 7-1.1 requires that the contractor “become familiar with and comply with all Federal, State, County and city laws, by-laws, ordinances, and regulations that control the action or operation of those engaged or employed in the work or that affect materials used”. <sup>[1]</sup>
  
- Compliance with noise regulations is required by contract  
Specification Subarticle 8-4.1 requires that the contractor “comply with all applicable regulations governing noise abatement”.<sup>[2]</sup>

<sup>[1]</sup> See FDOT Standard Specification for Road and Bridge Construction 2004, Section 7-1.1

<sup>[2]</sup> See FDOT Standard Specification for Road and Bridge Construction 2004, Section 8-4.1

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# Findings

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- ▶ Include the relevant **facts** and **contract provisions** as determined by the DRB in its deliberations
- ▶ Point by point organization provides clarity, however a narrative format may be used
- ▶ Include the text of contract provisions
- ▶ Provide citations for both facts and contract provisions



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# Sample Findings Section Format

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- HHC employed a specialty engineer to record and report on noise levels at Pond 23 East. However, there is no known record of noise levels prior to the May 25 suspension. There appears to be no way to determine if HCC was in violation of the noise ordinance prior to the May 25 work suspension.<sup>[1]</sup>

<sup>[1]</sup> See Letter from PSI to HCC dated Sep. 5, 2006

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# Sample Findings Section Format

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- The Engineer is given authority to temporarily suspend the Contractor's work by specification section 8.6.1 which reads as follows:<sup>[2]</sup>

***“8-6.1 Authority to Suspend Contractor’s Operations: The Engineer has the authority to suspend the Contractor’s operations, wholly or in part. The Engineer will order such suspension in writing, giving in detail the reasons for the suspension. Contract Time will be charged during all suspensions of Contractor’s operations. The Department may grant an extension of Contract time in accordance with 8-7.3.2 when determined appropriate in the Department’s sole judgment. No additional compensation nor a time extension will be paid or granted to the Contractor when the operations are suspended for the following reasons:***

- a. The Contractor fails to comply with the Contract Documents.*
- b. The Contractor fails to carry out orders given by the Engineer.*
- c. The Contractor causes conditions considered unfavorable for continuing the Work.”*

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▶ (2) See FDOT Standard Specification for Road and Bridge Construction 2004, Section 8-6.1

# Analysis

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- ▶ Provide an explanation of the reasoning used by the DRB in analyzing the facts and contract provisions
- ▶ Which contract provisions apply to this issue? How?
- ▶ Which facts apply to this issue? How?
- ▶ Given the facts and contract provisions, what is the resolution of this issue?
- ▶ A narrative discussion works well for this section



# Recommendation

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- ▶ What did they ask for?
- ▶ Make sure the recommendation addresses the request
  - ▶ Entitled to compensation?
  - ▶ Entitled to our interpretation of how the work is to be done?
- ▶ Qualifying or clarifying the recommendation?

We don't want to get into quantification, but sometimes clarification is helpful.

“The Contractor is entitled to additional contract days for weather delays during Phase B of the work.”

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# Writing Style

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**How to write better.**



# Outline Each Section Before Writing

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- ▶ Most people benefit from developing an outline of the section content before writing
- ▶ Outline consist of a series of headings, subheadings, key points
- ▶ Do the outline, then add your annotated notes



# Avoid Writer's Block by Writing the Easiest Section First

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- ▶ Don't agonize over the right words during the first pass
- ▶ Don't worry about spelling and grammar now

**At this point, this is a DRAFT.**



# This is Not Creative Writing

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- ▶ We do not need creative expressions
- ▶ This is not entertainment

“The contractor drove and spliced that pile to where the tip must have been in Beijing.”

“The superintendent would rather climb up on a light pole and tell a lie than stand on the ground and tell the truth.”



# Be Concise

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- ▶ Conciseness means expressing information in the least number of words.
- ▶ Conciseness = Clarity
- ▶ Clarity means free from Ambiguity
- ▶ Avoid rambling
- ▶ Don't include comments that are not central to the point being expressed

Ambiguity means that different readers may understand different meanings.



# Write in Everyday Language

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- ▶ Remember who your audience is
- ▶ Write it as you would say it
- ▶ But, use proper sentence structure



# Organization of Thoughts

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- ▶ Describe Big Picture before proceeding with detail
- ▶ Chronological progress is usually better for most readers



# Use Spell and Grammar Checkers

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- ▶ Available in word processing software
- ▶ Many free resources available on the web



# Use the Active Voice

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- ▶ Place the subject before the verb

The Contractor performed the required load test. ← Active

The required load test was performed by the Contractor. ← Passive



# Critique of Sample Recommendation

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**Open Discussion**



# How do you get better at writing?

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- ▶ Use a proven organizational template
- ▶ Use a simple reference for correct style
- ▶ READ

Reading a variety of Recommendations will significantly improve your Writing.

FDOT Published all of its DRB Recommendations  
<http://www.dot.state.fl.us/construction/CONSTADM/DRB/DRBDecisions.shtm>



# Questions ?

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# FDOT Publishes Recommendations on their website

FDOT-Construction-DRB Decisions - Mozilla Firefox

File Edit View History Bookmarks Tools Help

http://www.dot.state.fl.us/construction/CONSTADM/DRB/DRBDecisions.shtm

Most Visited Getting Started Latest Headlines

FDOT-Construction-DRB Decisions

R = Rejected  
P = Partial

| Dist | FIN #        | Contract | Subject   | A/R/P |
|------|--------------|----------|---|-------|
| 1    | 41764625201  | T1256    | <a href="#">CR 664A - Bridge Repair (Bridge #060017, #060031)</a>   | A     |
| 1    | 4081852-5201 | T1242    | <a href="#">SR 64 (Anna Maria Bridge) - Additional Compensation for Hopkins Frames &amp; Structural Steel</a> | A     |
| 1    | 2009661-5201 | T1108    | <a href="#">I-75 &amp; Alico Rd. Interchange-Water Use Permit Responsibility</a>                              | R     |
| 1    | 1961211-5201 | T1089    | <a href="#">SR 70 - Payment for Intersection Work</a>   | A     |
| 1    | 1957562-5201 | T1082    | <a href="#">SR 78 - Additional Compensation &amp; Time</a>  | R     |
| 1    | 1957051-5201 | T1078    | <a href="#">SR 78 - Laser Profiling &amp; Damage to Drain Pipes</a>   | A     |
| 1    | 1976791-5201 | T1064    | <a href="#">SR 25 (US 27) - Asphalt Price Adjustment</a>  | A     |
| 1    | 4038901-5201 | T1027    | <a href="#">US 27 Delays and Extra Work</a>   | P     |
| 1    | 4038901-5201 | T1027    | <a href="#">US 27 Extra Depth Asphalt</a>   | A     |
| 1    | 19573715201  | T1022    | <a href="#">US 41 (SR 45) - Entitlement to Extended Quality Control Costs</a>                                 | A     |
| 1    | 19573715201  | T1022    | <a href="#">US 41 (SR 45) - Differing Site Conditions for Existing Water &amp; Sanitary Sewer Force Mains</a> | A     |
| 1    | 19573715201  | T1022    | <a href="#">SR 45 (US 41) - Additional Cost for Using Asphalt Base</a>  | A     |
| 1    | 19573715201  | T1022    | <a href="#">SR 45 (US 41) - Escalation of Asphalt Aggregate Cost</a>  | A     |

Alternative Contracting  
... Please Select One ...

Contractor Issues  
... Please Select One ...

Publications  
... Please Select One ...

Technical Topics  
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[Labor Newsletter](#)  
[Training](#)

David A. Sadler, P.E.  
Director, Office of Construction

Site Map

FDOT Facilities

Done

Adobe Updater  
Updates are ready to be installed.

start Google Calendar - Wi... Microsoft PowerPoint FDOT-Construction-D... 4:09 PM