

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
DISPUTE REVIEW BOARD

CFS:BED

1 of 3

APPR:MRB:LFS:04-16-20
FHWA:APPR:05-05-20

a. Description. A Dispute Review Board (DRB) will be established for this contract. The DRB will evaluate and provide recommendations as to the entitlement of claims arising out of the work on the contract. Once a claim has been submitted, this project will follow the Department's Dispute Review Board (DRB) Procedures in lieu of the Department's written claim procedures. The DRB Procedures require an expedited Engineer response within 7 work days to the Contractor's claim and also provides the subsequent claim procedure requirements. The applicable DRB Procedures for this project are available on the Department's website:

<https://www.michigan.gov/mdot/business/construction/dispute-review-board>

A DRB recommendation is not legally binding on either party. The Engineer retains all administrative control of the project and will provide final direction to the Contractor.

b. Continuance of Work. During the course of the DRB process, continue with the work per the contract and the approved progress schedule or critical path method schedule, without delay, and conform to the Engineer's decision or order.

c. Dispute Review Board Membership. DRB members are to be selected from the Department's list of approved DRB candidates. The Engineer will provide, or allow access to, a list of approved DRB candidates. The DRB members are to be nominated after project award and will consist of the following three members:

1. One member selected by the Engineer,
2. One member selected by the Contractor, and
3. A chairperson mutually selected by the first two approved members.

The Contractor and the Engineer must provide the name of their candidate to the other party for review and approval. Once approved, the two selected DRB members must then provide the name of their chairperson candidate to the Engineer and Contractor for review and approval. The Engineer and Contractor are able to reject proposed members and must be satisfied that the DRB will be totally neutral and impartial. If there are any impasses with the selections, the Department's Chief Operations Officer, or their designee, will make the final decision.

Each DRB candidate must provide a conflict of interest disclosure statement to both the Contractor and the Engineer prior to approval as a DRB member. The disclosure statement must include any personal, professional, and financial relationships with any parties on the project. The disclosure statement must also provide any information describing past, present, anticipated, and planned relationships (including direct or indirect employment within the last 2 years, serving as

an expert witness, etc.) to other parties involved in this construction project, including but not limited to, relevant construction engineering and inspection (CEI) firms, designers, contractors, suppliers, consultants, the Department, etc. Past DRB service will not constitute employment by either party. Either party may become aware of a potential conflict of interest for a DRB member and may request an updated disclosure statement at any time. The existence of possible conflicts does not automatically preclude a candidate's selection for a DRB if the Engineer and Contractor mutually agree. Conflict of interest issues will be addressed as noted in the DRB Procedures.

Execute the DRB agreement, as provided by the Department, when all DRB members have been approved. This agreement will not modify the requirements or conditions of this special provision.

d. Referral of Claims to the DRB. Only claims that have been submitted per subsection 104.10 of the Standard Specifications for Construction can be referred to the DRB. Documented rejection of a DRB recommendation by either party will be considered the final DRB administrative action regarding a properly documented and submitted claim. Further legal action may then be pursued by the Contractor as project administrative options will be considered to have been exhausted.

e. Measurement and Payment. The DRB will be paid \$7,500 for each DRB hearing. The DRB chairperson will receive \$3,500 while the remaining two DRB members will receive \$2,000 each. The Department and the Contractor will equally share in the compensation due to the DRB for participation in a DRB hearing. The Contractor is required to pay the \$7,500 DRB hearing cost to the DRB members as specified above and provide proof of payment to the Engineer prior to the DRB hearing. The Department will compensate the Contractor for the Department's share of the cost (\$3,750) on the next subsequent pay estimate after the DRB hearing is conducted. Such payment will be full and complete compensation to DRB members for all expenses and time related to the DRB hearing. This payment includes all costs including, but not limited to, travel, accommodations, meals, time, pre/post hearing work, review of position papers and any rebuttals, conducting the DRB hearing, drafting and issuance of recommendations, and re-addressing any requests for clarification. Reimbursement of the Department portion of the DRB cost will be made to the Contractor under the pay item **Dispute Review Board, Hearing**.

The Engineer or Contractor may appeal a DRB recommendation as noted in the DRB Procedures. The compensation participation and reimbursement processes for an appeal hearing will be the same as for a regular hearing. The Engineer will process the DRB reimbursement for an appeal hearing to the Contractor under the pay item **Dispute Review Board, Hearing**.

The DRB will be paid \$3,500 for each DRB progress meeting. The DRB chairperson will receive \$1,500 while the remaining two DRB members will receive \$1,000 each. The Department will reimburse the Contractor for the full progress meeting cost of \$3,500 and the same methods of payment to the DRB and the Contractor set forth above will apply. The DRB cost for each progress meeting will be reimbursed to the Contractor under the pay item **Dispute Review Board, Progress Meeting**. There will not be any supplemental payment for the issuance of DRB advisory opinions at progress meetings.

The completed work, as described, will be paid at the respective values identified herein using the following pay items. These pay items are fixed in total value and the Contractor will not enter a unit bid cost for these pay items.

Pay Item

Pay Unit

Dispute Review Board, Hearing	Dollar
Dispute Review Board, Progress Meeting	Dollar