

DIVISION 100 – GENERAL PROVISIONS

SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS

102.10 SUBMISSION OF BIDS

THE FOLLOWING IS ADDED AT THE END OF THE SUBSECTION:

As an alternative to the Steps established in Subpart 107.12.02, a three-member Dispute Resolution Board (DRB) will be established for this Contract and will replace Subpart 107.12.02 Step II and Step III, through execution of a separate DRB Three-Party Agreement (DRB Agreement) between the Contractor, the Department, and the DRB members as set forth and as specified in 107.12.02.

SECTION 107 – LEGAL RELATIONS

107.12.02 STEPS

THE FOLLOWING IS ADDED:

1. Step I, RE.

THE SECOND PARAGRAPH OF IS CHANGED TO:

Within 10 days of the receipt of the decision by the RE at Step I, the Contractor shall accept or reject the decision in writing; or upon the Contractor's failure to accept or reject the decision in writing, the Department will terminate the DRB process. If the Contractor rejects the decision and intends to proceed with review by the DRB (DRB Review), the Contractor must request DRB Review within 10 days of receipt of the RE's decision by submitting the request (DRB Request) to the DRB Chair, copying the RE, the Field Manager, and the Regional Construction Engineer of the Department's Division of Construction Management.

As an alternative, a three-member (DRB) will replace Step II and Step III as established for this Contract, through execution of a separate DRB Agreement between the Contractor, the Department, and the DRB members, and as established and set forth below. The DRB is a contractual process and is not an administrative process

2. Step II, Regional Claims Review Board (RCRB).

THIS PART IS DELETED AND REPLACED BY THE DRB PROCESS

3. Step III, Claims Committee.

THIS PART IS DELETED AND REPLACED BY THE DRB PROCESS

THE FOLLOWING IS ADDED AFTER STEP I:

A. General

The DRB will provide independent, special expertise to facilitate resolution of claims to avoid disputes. The DRB will render non-binding recommendations or DRB Reports on issues and claims brought before it.

When an issue is elevated to a claim as specified in Subpart 104.03.04 and Subsection 107.12, the parties may bypass the Contractual Claim Resolution Process and utilize the DRB as set forth below. The use of the Contractual Claim Resolution Process or the DRB does not in any way affect the Contractor's or the Department's right to file legal action in court pursuant to the laws of the State of New Jersey.

If the Contractor and the Department agree to use the DRB, a DRB Agreement will be executed after the Notice to Proceed and upon selection of the 3 DRB members as specified in this Subpart. The execution of the DRB Agreement will not change the requirements, terms, or conditions of Subpart 107.12.02. The DRB Agreement template is located at the end of the Special Provisions as Attachment 12.

To ensure fairness, there must be no individual, ex-parte communication concerning the Project between the DRB and

employees of the Contractor or the Department during the life of the Project. Neither the Contractor nor the Department will request or accept ex-parte advice or consultation from the DRB or its members on matters concerning the Work or resolution of issues or claims. Matters requiring the attention of the DRB that arise within the time period between DRB meetings will be directed to the DRB Chair.

During meetings, site visits, and conferences, no DRB member will express their individual opinion concerning the merit of any part of a claim or issue outside of the formal DRB processes of providing a Recommendation or a DRB Report. DRB members do not represent or advocate for the party that nominated them.

Following execution of the DRB Agreement and periodically throughout the Project, the Department or the Contractor or both will furnish to each of the DRB members any documents necessary for the DRB to perform its functions including, but not limited to: the Contract for the Project, change orders, written instructions issued by the Department to the Contractor, and other documents of Project record, such as submitted claim notices, weekly progress summaries, and minutes of the weekly progress meeting.

B. DRB Membership

The DRB will consist of the following 3 members:

1. One DRB member selected by the Department and approved by the Contractor;
2. One DRB member selected by the Contractor and approved by the Department; and
3. One DRB member selected and mutually agreed upon by the first 2 DRB members. This DRB member will act as the chairperson (Chair) for all DRB activities.

Within 7 days after Award, both the Department and the Contractor will each select their proposed DRB member and obtain their resumes and disclosure statements. Within this same 7 days the Contractor and Department must have received a verbal commitment from their proposed member and notified each other who they have selected to serve as a DRB member.

The Department and the Contractor may reject the other's proposed DRB member only if there is a conflict of interest based on information provided in the proposed DRB member's properly completed conflict of interest disclosure. Within 14 days after receiving the notice of selection of a DRB member, the Contractor and the Department will notify each other, in writing, if they reject the proposed DRB member due to a conflict of interest.

The Contractor and the Department will review and try to approve potential DRB members by the date of the Pre-Construction meeting and before the Work begins. The review and approval process deadline may be extended by mutual agreement between the Contractor and Department. If a proposed DRB member is rejected, the party that selected them will, within 7 days, select another DRB member. Provide notification of the alternatively selected DRB member to the other party accompanied by their resume, conflict of interest disclosure and confirm their verbal commitment. The other party will, within 7 days, give written notice of their acceptance or rejection of the alternative DRB member. This process will continue with the same timeframes for all subsequent proposed DRB members until a member is accepted.

Once the first two DRB members are accepted, the Department will notify them of their selection. The notification should include a statement that, "the effective date of the DRB Agreement will be the date of this initial selection notification". The first two DRB members may be compensated for their time spent selecting the Chair per terms of the DRB Agreement.

Within 14 days after the selection notification, the two DRB members will propose a Chair of the DRB. The two DRB members will ensure that the Chair meets the DRB Member Requirements set forth below. The two DRB members will provide the Contractor and the Department with the proposed Chair's resume, conflict of interest disclosure, and verbal commitment. If the two selected DRB members cannot agree to a Chair, they will provide each other with a list of not less than 2 potential members for consideration. This process will continue every seven days until the selection of the Chair has been completed. The DRB members will provide the Contractor and Department with a copy of each list.

After all members of the DRB have been selected and approved, the Contractor, the Department, and the DRB members will execute the DRB Agreement. The execution of the DRB Agreement will not change the requirements, terms, or conditions of the Contract.

If during the life of the Contract, a DRB member no longer meets the requirements for DRB Membership, the DRB member

will immediately notify the Contractor, Department and the other DRB members in writing. Upon receipt of the notification, the Contractor or the Department may, within 7 days, give notice to the parties that this DRB member is no longer acceptable. The DRB member may request a meeting to present information or documents or both contending that the DRB member's participation should not be terminated.

Service as a DRB member, including the Chair, may be terminated at any time as follows:

1. DRB members may withdraw from the DRB by providing 30 days notice to the Department, the Contractor, and the other DRB members.
2. DRB members may be terminated for cause only upon mutual agreement by the Department and the Contractor.
3. The Department may terminate the Department appointed member for any reason.
4. The Contractor may terminate the CONTRACTOR appointed member for any reason.
5. The first two DRB members must agree to terminate the Chair.

In the event of a vacancy on the DRB and the need to appoint a replacement DRB member arises, replacement members will be appointed in the same manner as the vacated member was appointed. The selection of a replacement DRB member will be completed within 30 days after the vacancy. The DRB Agreement will be amended to reflect the change of a DRB member.

C. DRB Member Requirements

DRB members must be chosen from the Department's applicant pool. DRB members must have at least 10 years of experience with active involvement, supervision, or management of public agency highway and/or bridge construction contracts, with a preferable emphasis in resolution of disputes arising out of said contracts, as well as with the type of construction involved on the Project and experience in Construction Contract Administration. DRB members must have attended a Department hosted DRB training session prior to the start of the project.

DRB members must be impartial to both the Contractor and the Department. DRB members must not appear to be partial to either the Contractor or the Department. DRB members must not have any conflict of interests which could affect their ability to act in a disinterested and unbiased manner. Proposed DRB members will submit their resume to the appointing party. The resume will detail all applicable education, experience, and include a list of all projects in which they are currently serving as a DRB member or in any alternative dispute resolution capacity along with meeting frequencies.

D. DRB Conflict of Interest Disclosures

Each nominated DRB member, including the Chair, must provide a conflict-of-interest disclosure statement to both the Contractor and the Department. The conflict of interest disclosure must include any personal (family, business, etc.) financial relationships with anyone involved with the Project. The conflict of interest disclosure must also provide any information describing past, present, anticipated, and planned relationships (including indirect relationships) to other entities involved in this Project, including but not limited to, relevant construction engineering, construction inspection, contractors, suppliers, etc. Submit the conflict of interest disclosure before approval of the DRB member nominee.

The existence of possible conflicts does not automatically preclude a candidate's selection for a DRB as long as the Contractor or the Department agree. Upon receiving a conflict of interest disclosure, the Contractor or the Department may, within 14 days, give notice that this proposed DRB member is not acceptable and a new DRB member will be required to be selected and approved as provided previously. Failure to disclose a conflict of interest may result in termination of the DRB member.

The conflict of interest disclosure shall include, but is not limited by, any of the following categories of relationships or prior involvement in this project:

1. Any direct or indirect ownership or financial interest in the Contractor, consultant or consulting firm on the project, subcontractor or supplier on the project or any business of another DRB member.
2. Current employment by the Contractor, the Department, a consultant or consulting firm on the Project, subcontractor or supplier on the Project.
3. Within the one-year period immediately before award of the Contract: employment by the Department or the Contractor, a consultant or consulting firm on the project, any subcontractor or supplier on the project or any business of another DRB member.

4. A close personal relationship with any key individual in any firm involved in the Contract.
5. A prior involvement in the project of a nature, which might be construed as compromising their ability to act impartially in carrying out the duties of the DRB.
6. A Contract as a consultant to the Department or the Contractor or any subcontractor or supplier on the project.

These categories may be considered by the Contractor and the Department in determining if a DRB candidate is acceptable.

Service as a member of other DRBs or in any alternative dispute resolution capacity will not be considered as employment and will not disqualify a person from membership on the DRB for this Project.

E. DRB Operating Procedures and Duties

The DRB members will keep current on the progress of this project by:

1. Making in-person or virtually conducted visits to the Project site at least on a quarterly basis.
2. Maintaining access to current, provided Contract Documents and all relevant correspondences and communications of Project record.
3. Conducting regular meetings with Contractor and Department personnel throughout active construction (DRB Progress Meetings).

The DRB will be responsible for arranging and conducting meetings, conferences, and project visits. If the DRB members are approved in time and the DRB Agreement has been executed, then the DRB members will attend the Pre-Construction meeting, either in-person or virtually conducted participation, to become familiar with the Project.

The DRB will not maintain an official transcript of its conferences or deliberations. The DRB members will perform their responsibilities, impartially and independently in considering the facts and conditions related to the matters under consideration and the provisions of the Contract and applicable laws and regulations. The DRB members selected by the Department and the Contractor will not discuss the DRB conferences or deliberations with the Department and the Contractor independently before the DRB provides any Recommendation or DRB Report regarding a claim(s).

F. DRB Progress Meetings

DRB Progress Meetings are intended to familiarize the DRB with the Project, provide the DRB with construction updates on Project progress, and for the Contractor and the Department to present issues that may be in initial contention and to seek Recommendations regarding such issues from the DRB. The Contractor and the Department may have general discussions with the DRB regarding their positions on issues of initial contention, which may include requests for information, schedule updates, or other disagreements between the Contractor and the Department for which a DRB Conference has not been requested.

1. **Frequency of DRB Progress Meetings.** After the commencement of the Work, DRB Progress Meetings will occur regularly, as mutually agreed to by the Department, the Contractor, and the DRB. DRB Progress Meetings will continue until Acceptance, unless determined otherwise by the Department and Contractor.

Factors to be considered in determining the regularity of DRB Progress Meetings include progress of the Work, occurrence of unusual events, and the number and complexity of potential claims. If a DRB member is unable to attend a DRB Progress Meeting, the Chair will try to reschedule that meeting. Should rescheduling not be possible, the other two DRB members may attend the DRB Progress Meeting without the third. If two DRB members are unable to attend a DRB Progress Meeting, it must be rescheduled. Progress meetings may be in person or conducted virtually as determined by the DRB, Contractor, and Department.

The Chair, after conferring with the other DRB members and the Contractor and the Department, will develop an agenda for each DRB Progress Meeting. At the conclusion of the DRB Progress Meeting, the DRB may observe active sections of the Work, accompanied by representatives of both the Contractor and the Department. Contractor and the Department will point out all areas of the Project that could become an issue or claim.

G. Recommendations

A Recommendation is the DRB's preliminary assessment of the merits of the Contractor's and the Department's positions on an issue presented to the DRB for which a DRB Conference has not been requested. Recommendations are usually provided orally. Either the Contractor or the Department or both may object to the presentation of an issue to the DRB for

a Recommendation on the grounds that the issue is not appropriate for a Recommendation and should be referred for a DRB Conference instead. The DRB will provide a written reason to the Contractor and the Department if the DRB concludes that it will not hear a requested issue. The DRB will decide the nature of the submissions that it wishes the Contractor and the Department to provide on a case-by-case basis.

In most cases, the issue may be scheduled for presentation to the DRB as an item on the agenda at the next scheduled DRB Progress Meeting. If the issue is urgent, a separate meeting may be scheduled at a time and location convenient to the Contractor, the Department, and the DRB. The parties will make their presentations. The DRB determines who will present first. Each party will be allowed sufficient time to make a thorough oral presentation, provide the DRB with relevant documentation, and respond to the DRB's queries and requests. The Contractor and the Department will not have the opportunity to cross examine the other party at any point during or after their respective presentations.

The DRB members will, at their discretion, privately meet to discuss their assessment of the issue. The DRB will orally share with the Contractor and the Department its Recommendation, either that same day or scheduled at a time and location convenient to the Contractor, Department, and the DRB. Recommendations will not be binding and do not require either party to accept or reject it. If the issue is subsequently presented at a DRB Conference, the DRB will focus anew upon the facts as presented at that time without reference to any Recommendation.

H. DRB Conferences

After the Department and the Contractor have attempted to negotiate a claim resolution, either may refer it to the DRB for a conference to review the claim (DRB Conference) by submitting a DRB Request as specified in Subpart 107.12.02, as amended above.

Within 10 days after receipt of the DRB Request, the Chair will hold a pre-DRB conference call with identified contacts for the Contractor and the Department. During the pre-DRB Conference call, the timeframes for the Department and the Contractor to submit the Required DRB Conference Submissions outlined below will be set by mutual agreement of the Contractor, Department and the DRB. The DRB Conference will be scheduled within 30 days after holding the pre-DRB Conference call, or by extension mutually agreed to by the Contractor, Department, and the DRB.

DRB Conferences may be held in person at the job site upon mutual agreement by the Contractor, the Department, and the DRB or preferably held virtually, as determined by the DRB, the Contractor and the Department.

It is not intended for DRB Conferences to last longer than a day. The DRB will evaluate and provide its findings and suggestions for resolution of the claim in a written report (DRB Report) as to the merit (entitlement) only, merit with guidelines for quantum (damage amounts) if merit is found, merit with quantum amount if merit is found, or quantum amount only if merit were found in a previous report and the Contractor and Department could not agree on quantum. Usually, the DRB will hear entitlement and, if appropriate, provide guidelines for a quantum. If the Contractor and Department cannot negotiate a quantum, the DRB may consider the quantum in a second DRB Conference. The DRB will provide its DRB Conference Report (DRB Report) on entitlement within 20 days after the DRB Conference. The DRB may request additional time if both the Contractor and Department request that an evaluation of damages be provided in the DRB Report.

In the event that multiple claims have been advanced to the DRB within a 30-day period, the DRB may consider them in a single DRB Conference, if the Contractor and the Department mutually agree.

To encourage full disclosure and the free exchange of information and positions, the DRB will be treated like a settlement negotiation such that, except to the extent required by law, any oral and written communications in connection with the DRB will not be discoverable in any legal action regarding issues or claims submitted as part of the DRB. This protection will not apply to any Project records or documents generated regarding the Project which do not enjoy some statutory or other immunity or privilege, that are submitted in or utilized during the DRB process; however, this protection will apply to any summaries, analyses or other work product generated by the Parties, or their representatives, in furtherance of the DRB and after the date that the DRB Agreement is fully executed, whether generated at the direction of counsel or otherwise. The DRB members cannot be deposed and cannot be subpoenaed to testify or to produce documents in connection with any legal action instituted to pursue any claim or issue under review by the DRB, except as may be required by law.

At the DRB Conference, representatives of the Contractor and the Department will provide oral presentations to the DRB as well as in the presence of the other party. The DRB may request information of the Contractor or the Department in addition to that submitted for the DRB Conference. If either the Contractor or the Department fails to reasonably comply with such request, the DRB may render its DRB Report without the information.

If the DRB considers any additional information submitted as potentially new information that was not previously evaluated by the RE, the DRB may require that the claim revert back to Step I, for RE consideration, if the DRB considers that the information may alter the RE Step I decision toward resolution of the claim.

The DRB will not consider claims from subcontractors or suppliers unless they are actionable by the Contractor against the Department and are thus a contractor claim with the Department. In all required DRB Conference submissions described below, the Contractor must clearly identify the portions of the claim that involve subcontractor claims and the identity the subcontractor(s). The Contractor must ensure that all subcontractor documents are exchanged on a timely basis and submitted to the DRB as part of the Contractor's submissions. At any DRB Conference regarding a claim that includes one or more subcontractor claims, the Contractor will have a representative of the subcontractor with direct and actual knowledge of the claim in attendance. This representative may assist in or make the presentation of the subcontractor issues and will answer questions from the DRB.

The DRB will not conduct a DRB Conference to review a claim or combination of claims valued \$20,000 or less.

1. **Required DRB Conference Submissions.** The Contractor and the Department will prepare the 3 documents outlined below in preparation for the DRB Conference. The Contractor and the Department are encouraged to jointly prepare the Statement of Claim and the Common Reference Document (CRD). The Contractor and Department should be allotted 10 days to jointly prepare the Statement of Claim and to prepare the CRD.

The Contractor and Department will transmit the documents described below at approximately the same time to each DRB member. The Contractor is responsible for submitting the Statement of Claim, the CRD, its list of representatives to attend the DRB Conference, and its Position Paper to the DRB. The Department is responsible to simultaneously submit its list of representatives and its Position Paper to the DRB. The Parties must also exchange their lists of representatives and Position Papers at this time. The due date for these submissions will be mutually agreed upon by the Contractor, Department, and the DRB depending on the complexity of the dispute, the volume of material to be reviewed, the members' prior commitments and the contract requirements. All submissions will be made to the DRB at least 10 days before the DRB Conference.

The list of representatives to attend the DRB Conference should contain the following information: the person's name, title, professional affiliation, and, if the person will make a presentation, a brief summary of the matters that the person will address. In exceptional cases, and with prior approval of the DRB, the Contractor and the Department attorneys may be present but may not make presentations or participate in the DRB Conference in any way.

The Contractor and Department will each prepare a Position Paper, which is a statement describing the claim, their position regarding the claim, and identifying the contractual justification for that position. A Position Paper may cite to documents, exhibits, and reference material that must be attached to the Position Paper. The Position Paper should be a stand-alone document that clearly states that party's position in entitlement disputes (and the claim amount in time and dollars in quantum disputes) and clearly defines the contractual justification for the stated position, as well as the reasoning as to why the other party's position is not contractually correct and appropriate. All arguments that a party intends to put forth during the DRB Conference must be included in that party's Position Paper so that the other party has the opportunity to provide a considered response at the DRB Conference. Position Papers must be complete to avoid surprise presentations at the DRB Conference. Position Papers should include visual aids, exhibits, charts and summaries of documents, where appropriate, to facilitate the DRB's understanding of the issues.

Voluminous records that are not necessary for the DRB's understanding and consideration of the issues should not be included. References should be made to specific provisions of the contract documents. Other than the Position Papers and exhibits, the Contractor and Department may not send to the DRB any further exhibits or correspondence regarding the claim, without prior approval from the DRB.

2. **DRB Conference Structure.** The Chair will preside over the DRB Conference. The Contractor will make an initial presentation of its case, followed by the Department.

The Department and the Contractor should each designate one person as the primary presenter, although other individuals may give portions of the presentations and answer questions as appropriate. Electronic copies of overheads and computer-generated presentations, such as PowerPoint, must be provided to the DRB and the other party prior to their use in a DRB Conference.

The DRB members will control the DRB Conference and guide the discussion of issues by questioning the presenters or focusing their presentations in order to expeditiously obtain all information that the DRB deems necessary to make its findings. Only one person, who has been recognized by the Chair, may speak at a time. The Contractor's and Department's presenters should address the DRB members, not each other. Except in summation, repetitious discussion is discouraged.

The Rules of Evidence will not apply to the DRB Conference process. There will be no testimony under oath or any cross-examination by either Party. There will be no audio or video recording of the DRB Conference.

No questions or interruptions by either the Contractor or the Department will be allowed during the other party's presentation. Dialogue between the Contractor and the Department will be allowed only in exceptional situations and requires the approval of the Chair. At its discretion, the DRB may permit questioning of one party by another party if it facilitates the clarification of an issue. The Chair will control and limit such questioning and response.

DRB members may interrupt presentations when necessary to clarify a point or receive an explanation, which might be lost if left to a later time, or request pauses when presentations are too fast for adequate note taking. The DRB members may ask questions during the presentations on the facts of the case, and solicit interpretation of the contract documents, but will avoid questions that could be construed as favoring one side.

The DRB may ask the Contractor or the Department or both for additional factual documentation.

If presentations, documents, or exhibits are offered that contain information that was not included in the Position Papers, they will usually not be considered unless expressly permitted by the DRB. If the DRB permits their inclusion, the DRB Conference will be extended as necessary for the other party to review the new information, to reconsider its position, and to present rebuttal. If necessary, the DRB Conference will be adjourned and reconvened at a future date; however, the intent is to complete a DRB Conference in a single session.

The DRB may limit the presentation of documents or oral statements when it deems them to be irrelevant or redundant.

The DRB will ensure that the Contractor and the Department have ample opportunity to present their positions, at which point the DRB Conference will be officially concluded, unless the DRB requests additional written material. In that event, the DRB Conference will be continued until receipt by the DRB and the other party of the additional material, or at such other time as the DRB has no further questions. The other party will be given an opportunity to review additional material and respond.

3. **DRB Deliberations.** After the DRB Conference has concluded, the DRB will meet to formulate findings and suggestions for resolution of the claim. All deliberations will be conducted in private and must remain confidential. The DRB may request post-DRB Conference submittals including exhibits, job records, and written responses to DRB questions. All such post-DRB Conference submittals and written answers sent to the DRB must be simultaneously sent to the other party.
4. **DRB Report.** Within 20 days after the DRB Conference, the DRB shall issue a written report of its findings and non-binding suggestions regarding the resolution of a claim (DRB Report). If findings or suggestions or both on damages are sought by the Contractor or the Department, additional time to provide the DRB Report may be requested by the DRB. The Department and Contractor will have 10 days to accept, reject, or request clarification of specific elements of the DRB Report. Unless the DRB requests a clarification, failure of either the Department or the Contractor to accept or reject the DRB Report after 10 days of receipt will be considered a rejection.

Requests for clarification must be made through the Chair and must not consist of further argument or introduction of issues not presented at the DRB Conference. Within 10 days after receipt of the request, the DRB will provide any necessary clarification. The Department and the Contractor are limited to one request for clarification each. The Department and the Contractor will have 10 days after receipt of the DRB's clarification to accept or reject the DRB Report. Failure of either the Department or the Contractor to accept or reject the DRB Report after 10 days of receipt of the DRB's clarification will be considered a rejection.

The DRB will make every reasonable attempt to formulate a unanimous DRB Report. If the DRB does not agree unanimously, the position of the DRB will be by majority vote. A minority or dissenting position will be prepared and included with the majority position in the DRB Report. The minority position will include information and rationale to aid the Contractor and the Department in fully understanding it. The DRB may

elect not to disclose the identity of the dissenting DRB member.

The Chair must provide copies of the DRB Report via email to contact persons designated by the Contractor and the Department.

The DRB Report is the final step of the Department's Contractual Claim Resolution Process unless both parties agree to use non-binding mediation as specified in Subpart 107.12.02. The DRB is not bound by any offers of settlement or findings of entitlement made during Step I of the Contractual Claim Resolution Process or by any prior DRB recommendation.

I. Termination

The Contractor or the Department may terminate the DRB Agreement at any time and for any reason upon not less than 30 days written notice to all other parties to the DRB Agreement. If the DRB Agreement is terminated, Subpart 107.12.02 of the Contract will be replaced in its entirety by Subpart 107.12.02 of the Department's Standard Specifications for Road and Bridge Construction 2019.

The DRB will exist for the life of the Project and will not review issues or claims regarding any other project. The DRB Agreement shall remain active and in full force and effect after Acceptance and the DRB may continue operating if there are unresolved issues and claims remaining as specified in Subsection 109.11 and until the Project is administratively closed by the Department following final payment. If the Contractor or the Department files a lawsuit against the other, the DRB will be dissolved.

107.12.04 Measurement and Payment

The Department will measure and make payment for Items as follows:

| <i>Item</i> | <i>Pay Unit</i> |
|-------------|-----------------|
| DRB | DOLLAR |

Costs and compensation for each individual DRB member, including the Chair, will be established in the DRB Agreement executed by the Contractor, the Department, and the DRB members. The Department will pay the Contractor 50% of the cost. The Contractor will pay the DRB 100% of the cost.

Payment will be all-inclusive rates, as full and complete compensation to DRB members for all expenses and time related to the Regular Progress Meetings and DRB Conferences. Payment is comprised of all direct and indirect costs including, but not limited to: overhead, fee or profit, clerical support, travel expenses, safety equipment, materials, supplies, managerial support and all documents, forms, and reproductions thereof. This rate also includes portal-to-portal expenses as well as per day expenses such as meals and travel. This payment also includes premeeting and post meeting or conference work, site visits, review of position papers, conducting the DRB Conference, the drafting and issuance of Recommendations and DRB Reports, and addressing any requests for clarification.

Costs for Regular Progress Meetings and DRB Conferences, as well as need for any additional days for either, shall be shared equally by the Contractor and the Department. The Contractor is required to pay the entire amount for each Regular Progress Meeting and DRB Conference, and any additional days, directly to the DRB per the terms of the DRB Agreement, and shall provide proof of payment to the RE.

Payment to the Contractor is full payment for the Department's 50% share for the DRB. The Contractor is not entitled to additional payment under these pay items and must not claim additional costs related to the DRB.