PROSECUTION AND PROGRESS - PROSECUTION OF WORK - DISPUTES REVIEW BOARD.
(REV 3-1-24) (FA 3-13-24) (FY 2027-28)

ARTICLE 8-3 is expanded by the following new Subarticle:

8-3.7 Disputes Review Board: For this Contract, a Disputes Review Board (Board) will be established to assist in the resolution of disputes and claims arising out of the work on the Contract and will operate under the latest version of the Department's 'DRB Operation Procedures' posted online and be available for regular Board project meetings, virtual meetings and hearings.

8-3.7.1. Purpose: The Board will provide special expertise to assist in and facilitate the timely and equitable resolution of disputes and claims between the Department and the Contractor (Parties) in an effort to avoid construction delay and future claims.

It is not intended for the Parties to default on their normal responsibility to cooperatively and fairly settle their differences by indiscriminately assigning them to the Board. It is intended that the Board encourage the Parties to resolve potential disputes or claims without resorting to this alternative resolution procedure.

8-3.7.2 Disputes Resolution: The Board will be used when normal dispute or claim resolution is not succeeding. It is a condition of this Contract that the Parties shall use the Dispute Review Board. Either Party may refer a dispute or claim to the Board.

8-3.7.2.1 Advisory Opinions: At the request of either Party, the Board may provide a preliminary informal review to assist in the early resolution of any emerging disputes through an Advisory Opinion. Advisory Opinions may be provided during any regularly scheduled project meeting provided that the Party requesting the Advisory Opinion informs the Board and the other Party of the disputed issue at least one week before the meeting at which an Advisory Opinion will be sought.

Advisory Opinions will be informal oral discussions between the Board and the Parties in the presence of all parties. No formal position papers, written summaries, or presentations of any kind shall be provided to the Board and no written findings or recommendations will be provided from the Board to the Parties.

The Board will fairly and impartially consider emerging disputes referred to it and will provide informal Advisory Opinions to the Parties to assist in the resolution of these emerging disputes.

Advisory Opinions provided by the Board will not be binding on either Party.

If the Board is later called upon to issue a recommendation in connection with an emerging dispute on which it has provided an Advisory Opinion, the Board shall not be bound by any previous statements, discussions, or opinions that it may have made in the course of an Advisory Opinion, nor shall it take into account any prior Advisory Opinions in the consideration of a formal recommendation.

8-3.7.2.2 Disputes Review Hearings: Only disputes or claims that have been duly preserved under the terms of the Contract as determined by the Board will be eligible to be heard by the Board. Disputes or claims shall be referred to the Board by providing a position paper outlining the nature and scope of the dispute or claim and describing the basis for

entitlement to the dispute or claim. Claims that are referred to the Board must be in compliance with 5-12. Requests for equitable adjustment must be certified as required by 4-3.2.

Either party furnishing any written evidence or documentation to the Board must do so a minimum of 15 days prior to the date of the hearing for the dispute, and will at the same time furnish copies of such information to the other party. If the Board requests any additional documentation or evidence prior to, during, or after the hearing, the Party will provide the requested information to the Board and to the other Party.

The Board will fairly and impartially consider disputes or claims referred to it and will provide written recommendations to the Parties within 15 days completion of the hearing to assist in the resolution of these disputes or claims. In cases of extreme complexity, both Parties may agree to allow additional time for the Board to formulate its recommendations.

Recommendations provided by the Board will not be binding on either Party.

Within 15 days of receiving the Board's recommendations, both Parties will accept or reject the recommendations by responding to the other and to the Board in writing. The failure of either Party to reject within the 15-day period will be deemed an acceptance of the Board's recommendations by that party and shall preclude any further pursuit of this issue before this Board or any successive Board.

For disputes involving non-compensable time extensions, the Department will resolve the dispute in a good-faith manner regardless of its acceptance or rejection of the Board’s recommendations.

If Entitlement is determined by the Board, the Parties should proceed to negotiate monetary changes within 60 calendar days. If both Parties are unable to successfully negotiate monetary changes within 60 calendar days, the Board shall be notified of the impasse, and upon the request of both Parties shall then proceed to schedule a hearing to make a recommendation as to monetary damages.

If the Parties resolve the dispute with or without the aid of the Board's recommendations, the Department will promptly process any required changes to the Contract.

Requests for reconsideration of a Board recommendation may only be made when there is new evidence to present. The completed DRB hearing of any unresolved dispute or claims is a condition precedent to a Party having the right to initiate arbitration, other alternative resolution procedures, or to file a lawsuit, as provided by law, on such unresolved disputes or claims. In addition, all written recommendations of the Board will be admissible as evidence in any subsequent arbitration, or circuit proceedings, as provided by law.

8-3.7.3 Meetings:

8-3.7.3.1 Project Meetings: Meetings will be held at intervals as mutually agreed to by the Parties but will occur not less that quarterly. Each meeting will consist of an informal round table discussion and a field inspection of the work. The round table discussion will be attended by selected personnel from both Parties.

For projects without unresolved or emerging disputes, the Board will meet a minimum of monthly for the first three to six months. At that agreed upon milestone, the meeting frequency may be reassessed with continued meeting frequency set at not less than the quarterly interval.

For projects with unresolved or emerging disputes, the Board will meet, at least monthly, until the disputes are resolved.

8-3.7.3.2 Project Site Visits: The Board will visit the project site to keep abreast of construction activities and to develop a familiarity with the work in progress. The frequency, exact time, and duration of these visits will be as mutually agreed to by the Parties.

8-3.7.4 Continuance of Work: During the course of the Board process, the Contractor will continue with the work as directed by the Engineer in a diligent manner and without delay or otherwise conform to the Engineer's decision or order, and will be governed by all applicable provisions of the Contract. Throughout any protested work, the Contractor will keep complete records of extra costs and time incurred. The Contractor will permit the Engineer and Board access to these and any other records needed for evaluating the disputes and claims.

8-3.7.5 Membership: The Board will consist of one member selected by the Department and approved by the Contractor, and one member selected by the Contractor and approved by the Department. The first two members will mutually select and agree on the third member. Normally, the third member will act as Chairman for all Board activities.

8-3.7.6 Qualification: It is desirable that all Board members have at least ten years of experience with the type of construction involved in this project, in the interpretation of Contract Documents, and in contract dispute resolution. Board members must have attended the Dispute Resolution Board Foundation's Administration and Practices Workshop and must be on the Department's Lists of Candidate Members as provided on the Department's website. The goal in selecting the third member is to complement the construction experience of the first two members, to provide leadership for the Board's activities, and to provide expertise in the area of administering alternative contract resolution proceedings. It is imperative that Board members not show or be perceived as showing partiality to either the Contractor or the Department. A Board member shall not have any conflict of interest, which could affect their ability to act in a disinterested and unbiased manner.

8-3.7.7 Conflict of Interest: A person selected to the Board shall submit to the party appointing them a resume covering their applicable education and experience, a list of all DRBs, with meeting frequencies, on which they currently serve, and a disclosure statement covering, but not limited to, any of the following categories of relationships or prior involvement in this project:

a. Any direct or indirect ownership or financial interest in the Contractor awarded the project, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member.

b. Current employment by the Department, the Contractor awarded the contract, or the CEI consulting firm on the project. Service as a Dispute Review Board Member shall not be construed to be employment.

c. Current employment by any subcontractor or supplier on the project.

d. Current employment by a consulting engineering firm that will be seeking future contracts for CEI services from the Department.

e. Within the two year period immediately prior to award of the contract, employment by: the Central Office of the Department; the Department's District or Turnpike in which the project is located; the Department, as a consultant in the District or Turnpike in which the project is located; the Contractor awarded the contract, the CEI consulting firm on the project, any subcontractor or supplier on the project or any business of another Board member. Service as a Dispute Review Board Member shall not be construed to be employment.

f. A close personal relationship with any key individual in any firm involved in the contract.

g. 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 Board.

h. A contract as a consultant to the Contractor awarded the contract.

i. A contract as a consultant with any subcontractor or supplier on the project.

j. Current full-time employment by a Department prequalified contractor or consultant.

8-3.7.8 Disqualification: Category a, b, c, e, and j relationships listed in 8-3.7.5 shall disqualify a person from serving on the Board for this project. The other categories of relationships or prior involvement in this project listed above will be considered by the Parties in arriving at their decision as to whether or not to accept a person as a member of the Board.

If during the life of the contract, a Board member is made aware that a firm of which they are an employee is involved in the contract as a subcontractor or supplier, they shall immediately give notice to the Parties. Upon receiving such notification, either Party may, within ten (10) days, give notice that this Board member is no longer acceptable and a new Board member shall be selected and approved as provided above. In no event, shall a Board member participate in a hearing by the Board of dispute involving a firm by which they are employed.

The Department may disqualify a person from serving on future Disputes Review Boards for Department projects who submits a disclosure statement which fails to provide accurate and complete disclosure of a relationship that prohibits them from serving on the Board for this project or one of the possible conflicts of interest listed above.

8-3.7.9 Selection of Members: Every attempt shall be made by the Parties to complete the selection of Board members and execute the Three-Party Agreement prior to date of the preconstruction conference and, if applicable, the initial partnering workshop. The Parties shall select their Board members and give the other party notice of the person they have selected to serve as a member of the Board. This notice shall be accompanied by the resume and disclosure statement submitted by that person.

Within ten (10) days of receiving the notice of selection of a Board member, the Parties shall review the accompanying resume and disclosure statement, make such inquires as each deems necessary and notify the other party in writing as to whether or not the person selected is acceptable. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If a person selected is not acceptable to the other party, the party who selected that person shall within five (5) days select another person and provide to the other party to the contract a notification accompanied by a resume and disclosure statement.

Once the Parties have agreed upon the first two members of the Board they shall immediately notify those members of their approval. Within one week of this notification, the first two members of the Board shall select the third member and give written notice to the Parties accompanied by that person's resume and disclosure statement.

Within ten (10) days of receiving the notice of selection of a third member of the Board, the Parties shall review the accompanying resume and disclosure statement, make such inquires as each deems necessary and notify the first two members in writing as to whether or not the person selected is acceptable. If a person selected is not acceptable to the Parties the

first two members of the Board shall immediately select another person and provide notification accompanied by a resume and disclosure statement. Failure to give this notice within the ten (10) days allowed shall be construed to be acceptance.

If, (1) the either Party fails to provide the other party notice of selection of a Board Member within the time specified, herein; (2) the first two members of the Board fail to provide notice to the parties of their selection of the third member of the Board within the times specified, herein; or (3) the parties are unable to agree on appointment of a Board member within 60 days after award of the contract, that member shall be appointed by mutual consent of the Department's State Construction Engineer and the President of the Florida Transportation Builders Association.

Immediately after agreement is reached on all members of the Board the Contractor, the Department and the members of the Board shall proceed with execution of a Three Party Agreement as provided on the Department's website. The execution of this agreement will not modify the requirements, terms or conditions of this Specification.

If during the life of the contract, a Board member has a discussion regarding employment or entered into any agreement for employment after completion of the contract with the Department, the Contractor or any subcontractor or supplier on the project, they shall immediately disclose this to the Contractor and the Department and shall be disqualified from serving on the Board.

Should the Parties mutually agree to terminate a Disputes Review Board Three Party Agreement, the existing Disputes Review Board Three Party Agreement will remain in force until replaced by another a fully executed Disputes Review Board Three Party Agreement. If, after the Department has made final acceptance of the project, there are unresolved disputes and claims remaining, the Disputes Review Board Three Party Agreement shall remain active and in full force and effect until the project is otherwise administratively closed by the Department following final payment so that the Board may continue in operation until all unresolved disputes and claims are resolved.

8-3.7.10 Limitation for Referral of Disputes or Claims to the Board: Any disputes or claims that were not resolved prior to Final Acceptance of the project pursuant to 5-11 must be referred to the Board within 90 calendar days after Final Acceptance on projects with an original Contract amount of $3,000,000 or less, and within 180 calendar days after Final Acceptance on projects with an original Contract amount greater than $3,000,000. Only duly-preserved disputes or claims will be eligible to be heard by the Board. Failure to submit all disputes or claims to the Board within aforementioned timeframe after Final Acceptance constitutes an irrevocable waiver of the Contractor's dispute or claim.

8-3.7.11 Basis of Payment: A per day cost of $4,800 for the Contract has been established by the Department to reimburse the Contractor for providing compensation to the three members of the Disputes Review Board. This amount will be paid to the Contractor for each day the Board is convened for regular DRB project meetings. For each day of the meeting, the Contractor shall compensate each Board member a sum of $1,600. Such payment will be full compensation to the Board member for salary and all travel expenses (air fare, rental or personal automobile, motel room, meals, etc.) related to membership on the Board. Do not pay prior to the execution of the Three Party Agreement.

A per hearing cost of $11,500 for the Contract has been established by the Department for providing compensation for all members of the Dispute Review Board for participation in an actual hearing. The Board chairman will receive $4,500 for participation in

the hearing while the remaining two members will receive $3,500 each. The Department and the Contractor will equally provide compensation to the Board for participation in an actual hearing. The Department will compensate the Contractor $5,750 as its contribution to the hearing cost. Such payment will be full and complete compensation to the Board members for all expenses related to the hearing. This includes travel, accommodations, meals, pre- and post- hearing work, review of position papers and any rebuttals, conducting the hearing, drafting and issuance of recommendations, readdressing any requests for clarification. It is not intended for hearings to last longer than a single day, however, in some cases they may. Any additional time and/or compensation for a hearing would only be allowed upon prior written approval of the Department and the Contractor. If an additional day(s) is granted for the hearing, it will be at $4,800 per day, regular meeting rate, payment of which is equally split between the Department and the Contractor.

The Department will prepare and mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services, and will bear the cost of these services.

If the Board desires special services, such as legal consultation, accounting, data research, and the like, both parties must agree, and the costs will be shared by them as mutually agreed.

Payment shall be made under:

Item No. 999- 20- 1 Disputes Review Board meeting - per day.
Item No. 999- 20- 2 Disputes Review Board hearing - per each.