

APPROVED:
Division Administrator

By: _____
FEDERAL HIGHWAY ADMINISTRATION

Supplemental Specification

January 1, 2021

CLAIMS PROCEDURE

1. Scope of Procedure

The following claims procedure covers all claims for additional time or compensation arising under this contract. The claims procedure is non-binding and is a condition precedent to litigation or any other form of dispute resolution. All communications, testimony, and all documents prepared for this procedure by either party from the time of filing the CERTIFICATE OF CLAIM, per section 105.16.8 of the 2007 Standard of Specifications for Highway Construction, to the conclusion of the procedure shall be deemed to be settlement negotiations and not admissible in litigation or any other dispute resolution procedure. If at the conclusion of this procedure the claim has not been resolved, litigation may be pursued through the South Carolina Circuit Court for Richland County. Contractor waives all rights to a jury trial and agrees that all litigation matters shall be heard non-jury and venue for any action shall be in the South Carolina Circuit Court for Richland County.

2. Continuation of Work

At all times during the pendency of a claim under this procedure, the Contractor shall continue work pursuant to the contract and as directed by the Engineer as provided by the contract. If the Contractor fails to continue work, it may be declared delinquent in its work as provided by §108.08 of the South Carolina Standard Specifications for Highway Construction ("Standard Specifications").

3. Submission of Claim

The notice of claim and claim shall be submitted in accordance with §105.16.7 of the Standard Specifications. The notice of claim does not trigger this claims procedure. The claims procedure is initiated when the Contractor submits a written fully detailed CERTIFICATE OF CLAIM to the Resident Construction Engineer ("RCE"). The Contractor must submit three (3) hard copies and one (1) electronic copy of the Claim to the RCE. The claim shall contain, at a minimum, the information required by §105.16.7 of the Standard Specifications. The RCE shall immediately forward a copy of the claim to the District Engineering Administrator ("DEA") for resolution. If the DEA is unable to resolve the claim within thirty (30) days of receipt, the DEA shall forward it immediately to the Director of Construction ("DOC"), together with documents supporting the Department's position. The DEA shall also submit the supporting documents to the Contractor at this time. The DOC shall investigate the claim and attempt to resolve it by mutual agreement with the Contractor. If it cannot be resolved, then the DOC shall make a decision and forward the decision to the Contractor, no later than sixty (60) days after receipt by the DOC. The Contractor shall notify the DOC within thirty (30) days of receipt of the DOC's decision whether the Contractor accepts or rejects the decision.

For all claims under Fifty Thousand Dollars (\$50,000.00) the DOC's decision shall be final and shall conclude the claims procedure. For the purpose of determining if a time only claim may be submitted to the Board, the value of a time only claim shall be deemed to be the number of days requested multiplied by the contract daily rate for liquidated damages. The Contractor does not have a right to submit claims under \$50,000.00 to the Dispute Review Board. If the Contractor does not accept the DOC's decision on its claim of less than \$50,000.00, then its remedy is litigation in the South Carolina Circuit Court for Richland County as set forth in Paragraph 1 of this Claims Procedure or other mutually agreeable dispute resolution procedures.

For all claims in excess of \$50,000.00, if the Contractor rejects the DOC's decision the DOC shall forward the claim to the Dispute Review Board.

4. Dispute Review Board

A Standing Dispute Review Board has been established and shall be maintained. The Standing Dispute Review Board shall consist of one member selected by the Department, one member selected by the Director of Heavy and Highway Division of the Associated General Contractors (Carolina's Branch), and a third member selected by the first two members. The third member shall be the chairperson of the Standing Dispute Review Board. The selection of qualified Standing Dispute Review Board members shall be made in accordance with the Dispute Review Board rules and procedures (See Section 6.) Each member shall serve a three (3) year term and the terms shall be staggered. Each member is limited to two (2) terms. All board members shall be neutral and unbiased. No party shall have any *ex parte* communication with any Board Member.

5. Hearing Procedure

The Contractor shall provide an additional three (3) hard copies of its Claim and three (3) portable storage devices (thumb drives) containing its Claim for the DRB's use. The Department shall provide three (3) hard copies and three (3) portable storage devices (thumb drives) containing its response to the Claim for the DRB's use. The DOC shall send both the Contractor's Claim and the Department's response to the Claim to the DRB within 45 days of the Contractor's rejection of the DOC decision.

Within fifteen (15) days of notice of submission of the claim to the Board, the Contractor may submit to the DOC five (5) written and electronic copies of any additional documentation supporting its claim. The DOC shall immediately forward three (3) copies to the Board, one (1) copy to the DEA, and the DOC will keep one (1) copy.

Within fifteen (15) days of receipt of the Contractor's supplemental documentation, the DEA may submit to the DOC five (5) written and electronic copies of its additional documentation. The DOC shall immediately submit three (3) copies to the Dispute Review Board, one (1) copy to the Contractor, and the DOC will keep one (1) copy.

The Dispute Review Board shall review all documents and notify the parties of what additional documents, if any, it requires. The Dispute Review Board shall schedule a hearing at either party's request or may schedule a hearing at its own discretion. However, if a hearing is requested, it must be held no later than sixty (60) days after the DOC submits the claim to the Dispute Review Board. The location of the hearings shall be determined by the Board. While extensions of these deadlines are discouraged, the Dispute Review Board shall have authority to extend any of the above deadlines for just cause.

The Dispute Review Board shall have full authority to establish guidelines and procedures for the investigation of a claim. The entire process is intended to be flexible and the Board is encouraged to adapt the process to individual circumstances presented by particular disputes.

In the interest of timely resolution of all claims, the Board shall conduct all hearings and issue its final decision within ninety (90) days of receipt of the claim.

The Dispute Review Board Chairperson shall direct all meetings and hearings. Presentation of evidence shall be in accordance with the Dispute Review Board's rules and shall not be bound by judicial rules of evidence. Documents and testimony shall be presented in the order, manner and degree of detail that the Dispute Review Board deems most efficient and probative. Each party shall be allowed to make a brief initial presentation and to rebut any factual assertion by another party; however, the Dispute Review Board shall determine when enough evidence has been presented and it may limit the presentation of any

documentation or testimony that it deems not relevant or redundant. At the Board's option, testimony may be required to be given under oath and the oath shall be administered by the Chairperson.

Legal counsel for either party may be present at meetings or hearings as observers only. If a party intends to have its counsel present at a hearing, it must provide at least ten (10) days' notice prior to the meeting or hearing. Legal counsel may not speak on behalf of a party, unless requested by the Board. Counsel may not examine or cross-examine witnesses, object to questions or statements during meetings or make legal motions or arguments during meetings or hearings. The Board, by majority vote, may suspend legal counsel's privilege to attend meetings or hearings.

The Dispute Review Board shall issue to the Contractor and the Director of Construction a written recommendation with an explanation of the results as soon as reasonably possible following the conclusion of the hearing. However, in no event shall the Board take more than ninety (90) days from receipt of claim to conduct hearings and issue a recommendation. The Board is encouraged to reach a unanimous decision; however, it may provide a majority recommendation. The minority Board Member may provide a written explanation of his position. The Board shall provide further explanation of its decision if requested by either party within ten (10) days of the receipt of the decision. Issuance of the Board's recommendation concludes the claims procedure.

The parties may settle at any time during the procedure. If the dispute is resolved prior to issuance of a recommendation, the DOC shall immediately notify the Board.

Within sixty (60) calendar days of issuance of the Board's recommendation each party shall notify the other in writing whether or not they accept the Board's decision.

If at the conclusion of this procedure the claim has not been resolved, litigation may be pursued in South Carolina Circuit Court for Richland County as set forth in Paragraph 1 of this Claims Procedure.

The Board members shall not be compelled to testify, give any type of statements, nor produce any documents or evidence submitted at the DRB hearing in any subsequent proceedings or litigation.

6. Dispute Review Board Rules and Procedures

a. Qualifications of Dispute Review Board Members

- (1) All Dispute Review Board Members shall have substantial experience in highway or bridge design and construction. This experience may be technical, administrative or legal. The goal is to have a Board with the technical and administrative skills and experience that will promote confidence in its decisions.
- (2) No Dispute Review Board Member shall be employed currently or within the last three (3) years with the Department, any Contractor (currently or in the past pre-qualified with the Department), or any design consultant that has worked for the Department within the last three (3) years.
- (3) No Dispute Review Board Member shall have any financial or ownership interest in any party to the contract nor any design consultant or major subcontractor.

b. Selection of Dispute Review Board Members

The selection process for Dispute Review Board Members shall begin at the appropriate time in order to allow completion of the Member selection by beginning of the term. The selection process shall be as provided in Section 4.

c. Replacement of Board Members

Each party may elect to replace its Board Member at any time with a showing of reasonable justification. The Chairperson of the Board may be replaced at any time with the consent of both parties. If any Board Member is replaced, the new member shall be selected in the same manner in which the original appointment had been made.

If disputes are pending at the end of a member's term, the existing Board shall complete its hearing on the disputes and issue a decision.

d. Costs

Board Members shall be paid a reasonable hourly rate or salary for their services. Each party shall negotiate the fee arrangements with the Member it selects, however, the other party must agree on the rate. Both parties shall agree on the fee arrangement for the Chairperson.

Board Members shall be reimbursed for out-of-pocket expenses including, but not limited to, travel, copying, telephone, clerical services, and mailings. The Board Members shall be allowed reimbursement of actual expenses for meals up to the daily maximums set forth in the Department's Regulations for Reimbursement of Travel and Subsistence Expenses and actual lodging costs provided they stay in hotels approved by the Department and they obtain a government rate. Board Members must provide documentation for all expenses.

The parties shall share all Board Members' fees and expenses equally. The total fees and expenses to hear each claim shall not exceed the following maximum amounts unless otherwise agreed to by both parties in writing (one claim shall constitute all issues submitted to the Dispute Review Board at one (1) time):

<u>Claim Amount</u>	<u>Cumulative Total</u>
\$ 50,000 - \$499,999.99.....	\$15,000.00
\$500,000.00 - \$999,999.99.....	\$25,000.00
\$1 million - \$4,999,999.99.....	\$40,000.00
over \$5 million.....	\$75,000.00

The Department shall pay the Board Members and deduct the Contractor's share from monies owed to the Contractor. If monies owed are not sufficient, the Contractor shall pay the Department directly for its share of the fees and expenses.