

The following language will be provided in the Special Provisions for future NDOT projects utilizing Dispute Review Teams.

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**105.18 Disputes Review Team.** This Subsection of the Standard Specifications is hereby deleted and the following substituted therefore:

**105.18 Alternative Dispute Resolution.** A three-member Dispute Review Team (DRT) will be established to assist with the resolution of disputes arising out of the work of the contract. It is intended that the DRT encourage the Engineer and Contractor to resolve potential disputes without resorting to the hearing of disputes by the DRT. It is not intended for the Engineer or the Contractor to default on their normal responsibility to amicably settle their differences by indiscriminately assigning them to the DRT. A DRT member shall only serve on one Department DRT Team at any one time.

The alternative dispute resolution process is not a substitute for the submitting of a Request for Information (RFI) or the notification required under Subsection 104.02 which may be satisfied by the completion of the "Conflict Resolution Form". No attorney or legal counsel representing the Department or Contractor shall participate in DRT meetings or hearings. The Contractor must comply with Section 105.18 to pursue a claim, filing for arbitration, or filing for litigation.

The DRT members shall be selected and the Dispute Review Team (DRT) Three-Party Agreement shall be executed within 45 days of contract approval. Contact the Department's Construction Division for a copy of the Dispute Review Team Three-Party Agreement. The DRT shall be selected by the following mutual selection process. Both the Engineer and Contractor shall propose a list of three prospective DRT members. Each then selects one from the other's list. The Contractor and the Engineer will mutually select a Chairperson from the remaining listed prospective DRT members or, if they cannot agree, they may elect to have the two selected DRT members nominate the third, subject to approval by both the Contractor and the Department. Proposed DRT members must have completed dispute resolution training approved by both the Department and the Contractor prior to candidate nomination. The Engineer and the Contractor shall each have the opportunity to interview any prospective DRT member before their appointment is final.

Although the recommendations of the DRT should carry great weight for both the Engineer and the Contractor, they are not binding on either Party. The DRT shall only consider and make recommendations regarding the substance or merits of a dispute and shall not include recommendations in regards to costs. If the DRT recommendation does not resolve the dispute, the written recommendation, including any minority report, will be admissible as evidence, to the extent permitted by law, in any subsequent proceeding or forum to establish: (a) that a DRT considered the Dispute; (b) the qualifications of the DRT members; and (c) the DRT recommendation that resulted from the process.

At all times during the course of the dispute resolution, the Contractor shall continue with the work as directed, in a diligent manner and without delay, or shall conform to the Engineer's decision or order, and shall be governed by all applicable provisions of the contract. Records of the work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the contract.

Do not use the alternative dispute resolution process for disputes between the Contractor and subcontractors or suppliers that have no grounds for a legal action against the Department. If the Contractor fails to comply with Section 105.18 for a potential claim on behalf of a subcontractor or supplier, the Contractor releases the Department of the subcontractor's potential claim. Do not use the alternative dispute resolution process for quantification of disputes for overhead type expenses or costs.

All alternative dispute resolution activities must be completed before Contract acceptance. If a dispute becomes an unresolved claim after Contract acceptance, comply with Section 105 of the Specifications.

The costs associated with providing the Dispute Review Team and all approved DRT activities will be borne by the Department. The Contractor shall pay all initial costs incurred. The Department will reimburse the contractor all of the costs as evidenced by copies of invoices from the DRT members as allowed for in the Three-Party Agreement. Markup or profit added to the invoices will not be allowed. The Department shall not reimburse the Contractor any costs incurred by the Contractor in preparation of or associated with attending any DRT meeting or any DRT-related work performed after Contract close out.