### February 3, 2011

# REVISION OF SECTION 107

RESPONSIBILITY FOR DAMAGE CLAIMS,

INSURANCE TYPES AND COVERAGE LIMITS

###### **NOTICE**

## ICE

This is a standard special provision that revises or modifies CDOT’s *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT’s Project Development Branch with formal instructions regarding its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies that use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

**Instructions for use on CDOT construction projects:**

Use this standard special provision on all projects.

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Section 107 of the Standard Specifications is hereby revised for this project as follows:

Delete subsection 107.15 and replace with the following:

**107.15 Responsibility for Damage Claims, Insurance Types and Coverage Limits.**  The Contractor shall indemnify and save harmless the Department, its officers, and employees, from suits, actions, or claims of any type or character brought because of any and all injuries or damage received or sustained by any person, persons, or property on account of the operations of the Contractor; or failure to comply with the provisions of the Contract; or on account of or in consequence of neglect of the Contractor in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct of the Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, material or process involved is specifically required by the Contract; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or other law, ordinance, order, or decree. The Departmentmay retain as much of any moneys due the Contractor under any Contract as may be determined by the Department to be in the public interest.

(a) The Contractor shall obtain, and maintain at all times during the term of this Contract, insurance in the following kinds and amounts:

(1) Workers’ Compensation Insurance as required by state statute, and Employer’s Liability Insurance covering all of Contractor’s employees acting within the course and scope of their employment.

(2) Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent Contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

(i) $1,000,000 each occurrence;

(ii) $2,000,000 general aggregate;

(iii) $2,000,000 products and completed operations aggregate; and

(iv) $50,000 any one fire.

(v) Completed Operations coverage shall be provided for a minimum period of one year following final acceptance of work.

If any aggregate limit is reduced below $1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to CDOT a certificate or other document satisfactory to CDOT showing compliance with this provision.

(3) Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: $1,000,000 each accident combined single limit.

(4) Professional liability insurance with minimum limits of liability of not less than $1,000,000 Each Claim and $1,000,000 Annual Aggregate for both the Contractor or any subcontractors when:

(i) Contract items 625, 629, or both are included in the Contract

(ii) Plans, specifications, and submittals are required to be signed and sealed by the Contractor’s Professional Engineer, including but not limited to:

(A) Shop drawings and working drawings as described in subsection 105.02

(B) Mix Designs

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(C) Contractor performed design work as required by the plans and specifications

(D) Change Orders

(E) Approved Value Engineering Change Proposals

(iii) The Contractor and any included subcontractor shall renew and maintain Professional Liability Insurance as outlined above for a minimum of one year following final acceptance of work.

(5) Umbrella or Excess Liability Insurance with minimum limits of $1,000,000. This policy shall become primary (drop down) in the event the primary Liability Policy limits are impaired or exhausted. The Policy shall be written on an Occurrence form and shall be following form of the primary. The following form Excess Liability shall include CDOT as an additional insured.

(b) CDOT shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies. Completed operations additional insured coverage shall be on endorsements CG 2010 11/85, CG 2037, or equivalent. Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

(c) Each insurance policy shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to Contractor. The Contractor shall forward to the Engineer any such notice received within seven days of the Contractor’s receipt of such notice.

(d) The Contractor will require all insurance policies in any way related to the contract and secured and maintained by the Contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against CDOT, its agencies, institutions, organizations, officers, agents, employees and volunteers.

(e) All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to CDOT.

(f) The Contractor shall provide certificates showing insurance coverage required by this contract to CDOT prior to execution of the contract. No later than 15 days prior to the expiration date of any such coverage, the Contractor shall deliver CDOT certificates of insurance evidencing renewals thereof. At any time during the term of this contract, CDOT may request in writing, and the Contractor shall thereupon within ten days supply to CDOT, evidence satisfactory to CDOT of compliance with the provisions of this section.

(g) Notwithstanding subsection 107.15(a), if the Contractor is a “public entity” within the meaning of the Colorado Governmental Immunity Act CRS 24-10-101, et seq., as amended (“Act’), the Contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by CDOT, the Contractor shall show proof of such insurance satisfactory to CDOT. Public entity Contractors are not required to name CDOT as an Additional Insured.

(h) When the Contractor requires a subcontractor to obtain insurance coverage, the types and minimum limits of this coverage may be different than those required, as stated above, for the Contractor, except for the Commercial General Liability Additional Insured endorsement and those that qualify as needing Professional Liability Insurance.