April 30, 2015

REVISION OF SECTION 108

DELAY AND EXTENSION OF CONTRACT TIME

**NOTICE**

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 for 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 CDOT’s Standards and Specifications Unit. The instructions for use on CDOT construction projects appear below.

Other agencies which 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 in all projects.

Section 108 of the Standard Specifications is hereby revised for this project as follows:

In subsection 108.08, delete (c) and (d) and replace with the following:

1. *Delay.* Any event, action or factor that extends the performance period of the Contract.
2. *Excusable Delay:* A delay that was beyond the Contractor’s control and was not due to the Contractor’s fault or negligence. The Department may grant a contract time extension for an excusable delay.
3. *Compensable Delay*: A delay that the Department, not the Contractor, is responsible for entitling the *Contractor* to a time extension and monetary compensation. Monetary compensation for compensable delays will be made in accordance with Subsection 109.10.
4. *Noncompensable Delay:* An excusable delay that neither the Contractor nor the Department is responsible for that may entitle the Contractor to a contract time extension but no additional monetary compensation. Contract time allowed for the performance of the work may be extended for delays due to force majeure (i.e. acts of God, acts of the public enemy, terrorist acts, fires, floods, area wide strikes, embargoes, or unusually severe weather).
5. *Nonexcusable Delay*: A delay that was reasonably foreseeable or within the control of the Contractor for which the Department will not grant monetary compensation or a contract time extension.
6. *Concurrent Delay.* Independent delays to critical activities occurring at the same time.
7. The *Department* will not grant a time extension or additional compensation for the period of time that a non-excusable delay is concurrent with an excusable delay.
8. The Department may grant time but no compensation for the period of time that a non-compensable delay is concurrent with a compensable delay.

Delays in delivery of materials or fabrication scheduling resulting from late ordering, financial considerations, or other causes that could have been foreseen or prevented will be considered nonexcusable delays. However, delays caused by fuel shortage or delay in delivery of materials to the Contractor due to some unusual market condition caused by industry‑wide strike, national disaster, area‑wide shortage, or other reasons beyond the control of the Contractor which prevent procurement of materials or fuel within the allowable contract time limits will be considered excusable delays.

1. *Extension of Contract Time.* The Contractor’s assertion that insufficient contract time was specified is not a valid reason for an extension of contract time. For time extension requests, the Contractor shall provide a two-part submittal: part one shall consist of a written notice of the delay and part two shall consist of the Contractor’s delay documentation and supporting analysis.

Part 1: The Contractor shall provide the written notice of delay within seven days of the delay occurrence. The notice shall describe the delay and include documentation substantiating the nature and cause of the delay. Failure to submit the written notice constitutes a waiver of entitlement to additional time or compensation.

Part 2: This shall be submitted within 30 days of the written notice. The Contractor shall include all documentation needed to support the time extension request. In order to request additional contract time for an unexpected delay, the Contractor shall provide a contemporaneous schedule analysis in accordance with subsection 108.03. The schedule analysis shall show that the delayed activity or activities were on the critical path or became critical due to the delay.

The Engineer will base a determination of an allowable contract time extension on:

1. The current Schedule in effect at the time of the alleged delay;
2. The supporting documentation submitted by the Contractor;
3. The contemporaneous schedule analysis; and
4. Any other relevant information available to the Engineer.

For a time extension request resulting from a change order, the Contractor shall demonstrate the delay to the project completion date by:

1. Inserting a fragnet containing the change order activities into an unprogressed copy of the schedule that is current at the time of the change order;
2. tying the fragnet into the schedule logic; and
3. Recalculating the schedule.

The Department will not consider delays to activities which do not affect the performance period of the Contract as a basis for a Contract time extension. If the Engineer grants a contract time extension, the revised Contract Completion date will be in effect as though it were the original contract date.

A Contractor’s failure to have an approved, or approved with comments, current project schedule in place will preclude the Department from considering a Contractor’s a time extension request.