

**REVIEW OF NEW SPECIFICATION OR SPECIFICATION CHANGE**

105-105

**Specification Section No.:** 105

**Item:** Merit Binding Arbitration

**Originating Office:** Contracts & Market Analysis Branch

**By:** Straub

**Date Sent For Review:** June 9, 2016

**Date Comments Due:** June 23, 2016

**Submit response to: STANDARDS AND SPECIFICATIONS UNIT, DIVISION OF PROJECT SUPPORT  
4<sup>TH</sup> FLOOR, CDOT HEADQUARTERS**

Vote Y/N	Concurrent Reviews – Others Commenting	
	<b>Spec Committee Members:</b>	✓
	Co-Chairman: Lacey	
	Region 1: Quirk	
	Region 1: Stratton	
	Region 2: Ferguson	
	Region 3: Necessary	
	Region 4: Boespflug	
	Region 5: Valentinelli	
	Project Development: Vacant	
	Specifications: Brinck	
	Bridge: Hasan	
	Contracts & Market Analysis: Eddy	
	Materials: Schiebel	
	Traffic Engineering: Matthews	
	Maintenance: Weldon	
	FHWA: Feery	
	Attorney General: Milan	
	<b>Others:</b>	
	Colorado Contractors Assoc.: Moody	
	<b>Technical Committees:</b>	
	PDAC	
	Drainage Advisory Committee (DAC)	
	Water Quality Advisory Committee (WQAC)	

The attached Draft Specification is submitted for your review and comments. If not returned by Date Comments Due, the draft specification will be considered to be approved unless the Standards and Specifications Unit of the Project Development Branch [(303) 757-9474, (303) 757-9402] is advised otherwise.

**REMARKS:**

If these proposed changes are approved, our unit will issue them in a revised version of this standard special provision, which will also include the contents of Log No. 105-104.

**REVIEWER COMMENTS:**

( ) Approved ( ) Disapproved ( ) Modified

If disapproved or modified, give reason why and show any modifications on the attached draft copy:

\_\_\_\_\_  
Name/Signature

\_\_\_\_\_  
Date

<b>COLORADO DEPARTMENT OF TRANSPORTATION SUBMITTAL OF NEW SPECIFICATION OR SPECIFICATION CHANGE</b>	Log No. (Assigned by Standards and Specifications Unit) 105-105
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TO: Standards & Specifications Unit Project Development Branch	FROM: Mark Straub / Contracts & Market Analysis (Region, Branch or Technical Committee)
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SPECIFICATION SECTION NO. 105	ITEM  Disputes and Claims for Contract Adjustments	Priority  Routine <input type="checkbox"/> Fast <input checked="" type="checkbox"/>
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Reason for this new or changed specification:  
The specification in its current form allows contractors to submit disputes up to 30 days after receipt of the Form 96. Contractors are aware of any disputes they would have with CDOT well in advance of this time and it is best for both parties to be addressing disputes earlier. Therefore this proposed modification moves the time frame of submitting disputes to within 30 days of the Project Engineer's Final Acceptance.

Related to the issue above, sometimes disputes are brought forward and they linger until the end of the project. This proposed change would require the parties to actively resolve disputes.

These proposed changes originated within PDAC and are approved by PDAC.

New or Revised Specification:  
See Attached.

NOTE: See Procedural Directive 513.1 for a description of appropriate specification development procedures.

REVISION OF SECTION 105  
DISPUTES AND CLAIMS FOR  
CONTRACT ADJUSTMENTS

## 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 Design-Bid-Build projects and Modified Design/Build projects. Use in Design/Build projects unless your modified version of the SSP is approved by the Standards & Specifications Unit. If a standing DRB is required for the project, add the following General Note to the Plans: "There shall be a Standing Disputes Review Board for this Project." A standing DRB should be called for on the following types of projects:

1. Large projects (greater than \$15 million)
2. Projects with complex construction
3. Projects with large complex structures
4. Projects with multi-phase construction
5. Projects with major impacts to traffic
6. Projects with other complicating factors that could easily lead to disputes

On projects that require a standing DRB, establish a planned force account item to cover the ongoing costs of the DRB.

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REVISION OF SECTION 105  
DISPUTES AND CLAIMS FOR  
CONTRACT ADJUSTMENTS

Section 105 of the Standard Specifications is hereby revised for this project as follows:

Delete subsections 105.22, 105.23 and 105.24 and replace with the following:

**105.22 Dispute Resolution.** Subsections 105.22, 105.23, and 105.24 detail the process through which the parties (CDOT and the Contractor) agree to resolve any issue that may result in a dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible. Figure 105-1 in the standard special provisions outlines the process. Specified time frames may be extended by mutual agreement of the Engineer and the Contractor. In these subsections, when a time frame ends on a Saturday, Sunday or holiday, the time frame shall be extended to the next scheduled work day.

An issue dispute is a disagreement concerning contract price, time, interpretation of the Contract, or all three between the parties at the project level regarding or relating to the Contract. Disputes/Issues include, but are not limited to, any disagreement resulting from a delay, a change order, another written order, or an oral order from the Project Engineer, including any direction, instruction, interpretation, or determination by the Project Engineer, interpretations of the Contract provisions, plans, or specifications or the existence of alleged differing site conditions.

The Contractor shall be barred from any administrative, equitable, or legal remedy for any issue which meets both of the following criteria:

1. The Contractor did not bring the issue to the Project Engineer's attention in writing within 20 days of the Contractor being aware of the issue.
2. The Contractor fails to continually (weekly or otherwise approved by both parties) work with CDOT towards a resolution.

A dispute is an issue in which- the Contractor and CDOT have not been able to resolve and of which the Contractor submits a written formal notice of dispute per section (b) below.

A claim is a dispute not resolved at the Resident Engineer level or resolved after a DRB recommendation.

The term "merit" refers to the right of a party to recover on a claim or dispute, irrespective of quantum, based on the substance, elements, and grounds of that claim or dispute. The term "quantum" refers to the quantity or amount of compensation or time deserved when a claim or dispute is found to have merit.

Disputes from subcontractors, material suppliers, or any other entity not party to the Contract shall be submitted through the Contractor. Review of a pass-through dispute does not create privity of Contract between CDOT and the subcontractor.

If CDOT does not respond within the specified timelines, the Contractor may advance the dispute to the next level.

When the Project Engineer is a Consultant Project Engineer, actions, decisions, and determinations specified herein as made by the Project Engineer shall be made by the Resident Engineer.

The dispute resolution process set forth in this subsection shall be exhausted in its entirety prior to initiation of litigation or arbitration. Failure to comply with the requirements set forth in this subsection shall bar either party from any further administrative, equitable, or legal remedy. If a deadline is missed that does not prejudice either party, further relief shall be allowed.

All written notices of dispute shall be submitted within 30 days of date of the Project Engineer's Final Acceptance letter (105.21(b)).

All disputes and notices of claims shall be submitted within 30 days of the date of the certified letter submitting the CDOT Form 96, Contractor Acceptance of Final Estimate, to the Contractor.

When a project has a landscape maintenance period, the Project Engineer will grant partial acceptance in accordance with subsection 105.21(a). This partial acceptance will be project acceptance of all the construction

work performed prior to this partial acceptance. All disputes and claims related to the work in which this partial acceptance is granted shall be submitted within 30 days of the Project Engineer's partial acceptance.

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