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| REVIEW OF NEW SPECIFICATION OR SPECIFICATION CHANGE | | | | 108-50 2nd Review |
| **Specification Section No.:** 108 and 109 | | | **Item:** Payment Schedule (Multiple Fiscal Years) | |
| **Originating Office:** Contracts and Market Analysis | | | **By:** Gray | |
| **Date Sent For Review:** 9/9/2016 | | | **Date Comments Due: 9/22/16** | |
| Submit response to: STANDARDS AND SPECIFICATIONS UNIT, DIVISION OF PROJECT SUPPORT 4TH FLOOR, CDOT HEADQUARTERS | | | | |
| **Vote**  **/N** | **Concurrent Reviews – Others Commenting** | | 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.  This is the second review of this document, and has a review and voting period of two weeks, rather than the usual four. | |
|  | **Spec Committee Members:** | **✓** |
|  | Co-Chairman: Lacey |  |
|  | Region 1: Quirk |  |
|  | Region 1: Stratton |  |
|  | Region 2: Phillips |  |
|  | 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 |  | REVIEWER COMMENTS:  ( ) Approved ( ) Disapproved ( ) Modified  If disapproved or modified, give reason why and show any modifications on the attached draft copy:    \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_  Name/Signature Date | |
|  | Maintenance: Weldon |  |
|  | FHWA: Egal |  |
|  | Attorney General: Milan |  |
|  |  |  |
|  | **Others:** |  |
|  | Colorado Contractors Assoc.: Moody |  |
|  |  |  |
|  | **Technical Committees:** |  |
|  | PDAC |  |
|  | Drainage Advisory Committee (DAC) |  |
|  | Water Quality Advisory Committee (WQAC) |  |

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| COLORADO DEPARTMENT OF TRANSPORTATION SUBMITTAL OF NEW SPECIFICATION OR SPECIFICATION CHANGE | | | Log No. (Assigned by Standards and Specifications Unit)  108-50 | |
| TO: Standards and Specifications Unit, Project Development, Suite 290 | | FROM: Marci Gray, Award Officer, Contracts and Market Analysis, Division of Project Support  (Region, Branch or Technical Committee) | | |
| SPECIFICATION SECTION NO.  109-Payment Schedule Multiple Fiscal Years | ITEM | | | Priority  Routine Fast |
| Reason for this new or changed specification:  The changed specification brings the spec into conformance with Colorado fiscal rules and the new process requirements for Incrementally Encumbered projects. | | | | |
| New or Revised Specification: | | | | |
| Note: See Procedural Directive 513.1 for a description of appropriate specification development procedures. | | | | |

**CDOT Form 1215 10/01**

VERSION 1 OF THE PROPOSED SPECIAL PROVISION, DATED 4/26/2016

October xx, 2016

REVISION OF SECTIONS 108 AND 109

PAYMENT SCHEDULE (MULTIPLE FISCAL YEARS)

Sections 108 and 109 of the Standard Specifications are hereby revised for this project as follows:

Delete subsection 108.04, and replace with the following:

**108.04 Payment Schedule.** The Contractor shall prepare a payment schedule which shall show the dollar amount of work the Contractor expects to complete by the progress estimate date each month for the duration of construction. The payment schedule shall be signed by the Contractor’s authorized agent. The payment schedule shall show the dollar amount of work the Contractor expects to complete for every month on the Contract from commencement of work to Project Acceptance. The fiscal year (July 1 to June 30) totals shall also be shown on the payment schedule. The payment schedule may be prepared using standard spreadsheet software such as MS Excel and submitted in electronic format.

1. *Initial Payment Schedule.* The Contractor shall submit the certified initial payment schedule within 15 days of the award of the Contract. The amounts shown shall include planned force account work and expected incentive payments.
2. *Payment Schedule Updates.* Once each month the Contractor shall submit a payment schedule update to the Engineer. The update shall be in the same format as the initial payment schedule and shall be submitted to the Engineer by the first day of each month. In each update, estimated monthly dollar amounts shall be revised to match actual progress payments made to the Contractor to date. Each update shall show corrected dollar amounts of work, including Force Accounts and expected incentive payments, to be completed each month through the expected completion date as shown on the Contractor’s progress schedule.

If the update has any State Fiscal Year (July 1 to June 30) payment in excess of the encumbrance amount, the Department may, in its sole discretion, approve the update. If the Department does not approve the update the Contractor shall either revise the payment schedule or proceed at his own risk. The risk will be not being paid in a timely manner or not being paid at all for any amounts over the encumbrance amount. If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.

If the update exceeds the encumbrance amount because of additional compensable work, and the Department does approve this update, any delay to critical path work related to this additional compensable work will be considered excusable and compensable in accordance with subsection 108.08 (c), if the Contractor does not proceed at his own risk.

If the update has any State Fiscal Year exceeds the encumbrance amount because of the Contractor's accelerated schedule, and the Department does not approve the update, the delay for not performing the work associated with the Contractor's accelerated schedule in the scheduled Fiscal Year will be noncompensable in accordance with subsection 108.08(c), if the Contractor does not proceed at his own risk.

1. *Failure to Submit Payment Schedule.* If the Contractor fails to submit the initial payment schedule, the Contract will not be executed. If a payment schedule update is not submitted by the required date, the Engineer will withhold progress payments until such time as the Contractor has submitted a current payment schedule.

Subsection 109.06 shall include the following:

1. *Maximum Partial Payments*. Partial payments will not be made in excess of the encumbrance amount except at the sole discretion of the Department. Work performed in excess of the encumbrance amount, without written approval of the Department, shall be performed at the Contractor’s risk.

If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.

**Summary of Comments and Responses**

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| Agency/Region | Comment | Response |
| CCA |  |  |
|  | In regard to the following :    “If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.”    What does that ratification process look like? CDOT needs to let us know so that we are prepared and take all the right steps to ensure payment for at-risk work will be approved. | *A form is required to describe work and how it was procured.*  *2 weeks notification required shall be added into the spec.* |
|  | While I would not think it is CDOT’s intent to not pay (ever) for work performed in excess of a fiscal year projected amount, it’s not clear to me in this. The purpose of this specification should be limited solely to timing of payments, not the total amount. In other words, the total contract amount should not be impacted by this provision.    This does not address the event of payments less than scheduled. I would guess the assumption is those unused payments roll into the next fiscal year.    Another clarification I would like to see is whether the payment schedule is based on gross amounts or net of retainage. | *We do not want to give you the assurance that we will pay you anyway. The fiscal rules are clear regarding at-risk work. Will clarify the language.*  *Unused amounts will roll forward to the next fiscal year. Will clarify this.*  *Retainage is based on gross amounts. Will clarify.* |
|  | Under 108.04(a), it states that the Contractor shall submit the certified initial payment schedule within 15 days of the award of the Contract.  We believe this will lead to inaccurate information being submitted due to the time constraints set forth. Since this could be considered an approval/rejection type of submittal, we suggest submitting the payment schedule/drawdown and the CPM schedule at the pre-construction meeting and eliminating the 15 day obligation.  No reference to Value Engineering Proposals and how the payment schedule/drawdown schedule could affect the overall project due to such VE proposals. We suggest that a revised payment schedule be allowed to be submitted with each Value Engineering proposal.  No reference to the payment schedule and approval/rejection potential being discussed in the Partnering Conference. We suggest this be a topic at any Partnering Conference so that the team can discuss this and plan on a path forward to ensure that this specification is met. | *Have to have within 15 days of award, otherwise we cannot award. This is non-negotiable.* |
|  | Under 108.04(a), it states that the Contractor shall submit the certified initial payment schedule within 15 days of the award of the Contract.  We believe this will lead to inaccurate information being submitted due to the time constraints set forth. Since this could be considered an approval/rejection type of submittal, we suggest submitting the payment schedule/drawdown and the CPM schedule at the pre-construction meeting and eliminating the 15 day obligation.  No reference to Value Engineering Proposals and how the payment schedule/drawdown schedule could affect the overall project due to such VE proposals. We suggest that a revised payment schedule be allowed to be submitted with each Value Engineering proposal.  No reference to the payment schedule and approval/rejection potential being discussed in the Partnering Conference. We suggest this be a topic at any Partnering Conference so that the team can discuss this and plan on a path forward to ensure that this specification is met. | *Option letters are driven by project acceleration increasing the bid amount.*  *Usually value engineering implies prices going down, not cost overrun.* |
|  | Changes Suggested:   1. Modify the “at-risk” portion of the specification as follows:   Original: “If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.”  Proposed: …If a Contractor has agreed to proceed at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office and the Project Engineer.   1. Modify Section 108.04(a) to read:   (a) Initial Payment Schedule. The Contractor shall submit a certified initial payment schedule at the preconstruction conference. The payment schedule shall show the total dollar amount of work expected to be completed by each month’s progress estimate date and a total for each of the State’s Fiscal Years that the project will be active. The amounts shown shall include planned force account work and expected incentive payments. The payment schedule should also reflect any schedule changes that have been submitted and approved by the Engineer.  Add: Coordination between the project and the State Controller’s office shall be through the Department. All approvals that are the responsibility of the Contractor are to be coordinated and received from the Department.   1. Designate the revised specification be a suggested topic at all Partnering Conferences. 2. Add language to the specification that reads:   Upon any Value Engineering Proposal submittal, Contractor is allowed to submit a revised payment schedule to reflect changes included in the proposal. Upon approval of the Value Engineering Proposal, the revised payment schedule shall become the approved schedule. | *The project engineer is not involved in this process, since the work is unauthorized. Do not agree with making this change.*  *Force account items are included in our not to exceed Contract amount.*  *Use definition from Spec Book.*  *Ratification is the responsibility of the owner so the first sentence is correct.* |
| Region 1 |  |  |
|  | **108.04 Payment Schedule.** The Contractor shall prepare a payment schedule which shall show the dollar amount of work the Contractor expects to complete by the progress estimate date each month for the duration of construction. When the Payment Schedule is used to determine the “Encumbrance Amount,” it shall be signed by the Contractor’s authorized agent. The schedule shall cover the period from the commencement of work to the expected completion date as shown on the Contractor’s progress schedule. The payment schedule shall show the dollar amount of work the Contractor expects to complete by the end of each State Fiscal Year (July 1 to June 30). The payment schedule may be prepared using standard spreadsheet software such as MS Excel and submitted in electronic format. |  |
|  | ) *Initial Payment Schedule.* The Contractor shall submit the certified initial payment schedule within 15 days of the award of the Contract. The Contractor may submit a revised initial schedule at the preconstruction conference. The payment schedule shall show the total dollar amount of work expected to be completed by each month’s progress estimate date and a total for each of the State’s Fiscal Years that the project will be active.  The amounts shown shall include planned force account work and expected incentive payments. |  |
|  | If the payment schedule update has any State Fiscal Year (July 1 to June 30) payment in excess of the most recently approved payment schedule’s fiscal year totals, the Department may, in its sole discretion, approve the Fiscal Year payment increases in the Contractor’s schedule of payments. If the Department does not approve the Fiscal Year payment increases the Contractor shall either revise the payment schedule to conform to the most recently approved payment schedule or proceed at his own risk. If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office. |  |
|  | If the payment schedule update has any State Fiscal Year payment in excess of the most recently approved payment schedule because of differing site conditions, changes, or extra work performed in accordance with Section 104, and this payment is not approved by the Department, the delay for not performing this defined work in the scheduled Fiscal Year will be compensable in accordance with subsection 108.08(c), if the Contractor does not proceed at his own risk. |  |
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| **COLORADO DEPARTMENT OF TRANSPORTATION** **SUBMITTAL OF NEW SPECIFICATION OR SPECIFICATION CHANGE** | | | Log No. (Assigned by Standards and Specifications Unit)  108-50 | |
| TO: Standards and Specifications Unit, Project Development, Suite 290 | | FROM: Marci Gray, Award Officer, Contracts and Market Analysis, Division of Project Support  (Region, Branch or Technical Committee) | | |
| SPECIFICATION SECTION NO.  108 and 109 | ITEM  Payment Schedule Multiple Fiscal Years | | | Priority  Routine Fast |
| Reason for this new or changed specification:  The changed specification brings the spec into conformance with Colorado fiscal rules and the new process requirements for Incrementally Encumbered projects. This process is already being implemented.  The modifications include:  1. When an initial payment schedule is used to determine the encumbrance amount, the payment schedule shall be signed by the Contractor’s authorized agent.  2. Clarification that when fiscal year payment increases are not approved, the Contractor proceeding at his own risk will only receive payment for the at-risk work if it is ratified by the State Controller’s office.  3. Modifies the special provision to state if a Contractor fails to submit an initial payment schedule, the Contract will not be executed. | | | | |
| New or Revised Specification:  **See Attached.** | | | | |
| Note: See Procedural Directive 513.1 for a description of appropriate specification development procedures. | | | | |

**CDOT Form 1215 10/01**

VERSION 2 OF THE PROPOSED SPECIAL PROVISION, DATED 9/9/2016

October xx, 2016

REVISION OF SECTIONS 108 AND 109

PAYMENT SCHEDULE (MULTIPLE FISCAL YEARS)

**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 projects which are expected to require more than one State fiscal year to complete.

October xx, 2016

REVISION OF SECTIONS 108 AND 109

PAYMENT SCHEDULE (MULTIPLE FISCAL YEARS)

Sections 108 and 109 of the Standard Specifications are hereby revised for this project as follows:

Delete subsection 108.04, and replace with the following:

**108.04 Payment Schedule.** The Contractor shall prepare a payment schedule which shall show the dollar amount of work the Contractor expects to complete by the progress estimate date each month for the duration of construction. The payment schedule shall be signed by the Contractor’s authorized agent. The payment schedule shall show the dollar amount of work the Contractor expects to complete for every month on the Contract from commencement of work to Project Acceptance. The fiscal year (July 1 to June 30) totals shall also be shown on the payment schedule. The payment schedule may be prepared using standard spreadsheet software such as MS Excel and submitted in electronic format.

1. *Initial Payment Schedule.* The Contractor shall submit the certified initial payment schedule within 15 days of the award of the Contract. The amounts shown shall include planned force account work and expected incentive payments.
2. *Payment Schedule Updates.* Once each month the Contractor shall submit a payment schedule update to the Engineer. The update shall be in the same format as the initial payment schedule and shall be submitted to the Engineer by the first day of each month. In each update, estimated monthly dollar amounts shall be revised to match actual progress payments made to the Contractor to date. Each update shall show corrected dollar amounts of work, including Force Accounts and expected incentive payments, to be completed each month through the expected completion date as shown on the Contractor’s progress schedule.

If the update has any State Fiscal Year (July 1 to June 30) payment in excess of the encumbrance amount, the Department may, in its sole discretion, approve the update. If the Department does not approve the update the Contractor shall either revise the payment schedule or proceed at his own risk. The risk will be not being paid in a timely manner or not being paid at all for any amounts over the encumbrance amount. If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.

If the update exceeds the encumbrance amount because of additional compensable work, and the Department does approve this update, any delay to critical path work related to this additional compensable work will be considered excusable and compensable in accordance with subsection 108.08 (c), if the Contractor does not proceed at his own risk.

If the update has any State Fiscal Year exceeds the encumbrance amount because of the Contractor's accelerated schedule, and the Department does not approve the update, the delay for not performing the work associated with the Contractor's accelerated schedule in the scheduled Fiscal Year will be noncompensable in accordance with subsection 108.08(c), if the Contractor does not proceed at his own risk.

1. *Failure to Submit Payment Schedule.* If the Contractor fails to submit the initial payment schedule, the Contract will not be executed. If a payment schedule update is not submitted by the required date, the Engineer will withhold progress payments until such time as the Contractor has submitted a current payment schedule.

Subsection 109.06 shall include the following:

1. *Maximum Partial Payments*. Partial payments will not be made in excess of the encumbrance amount except at the sole discretion of the Department. Work performed in excess of the encumbrance amount, without written approval of the Department, shall be performed at the Contractor’s risk.

If a Contractor proceeds at his own risk, then payment for the at-risk work will be dependent upon ratification of this work by the State Controller’s Office.