January 20, 2017

REVISION OF SECTION 109

PROMPT PAYMENT

**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, except local agency projects.

January 20, 2017

REVISION OF SECTION 109

PROMPT PAYMENT

Section 109 of the Standard Specifications is hereby revised as follows:

Delete subsection 109.06 (e) and replace with the following:

1. *Prompt Payment*. The Contractor shall pay subcontractors and suppliers for all work which has been satisfactorily completed within seven calendar days after receiving payment for that work from the Department. For the purpose of this section only, work shall be considered satisfactorily complete when the Department has made payment for the work. The Contractor shall include in all subcontracts a provision that this requirement for prompt payment to subcontractors and suppliers must be included in all subcontracts at every tier. The Contractor shall ensure that all subcontractors and suppliers at every tier are promptly paid. If the Contractor or its subcontractors fail to comply with this provision, the Engineer will not authorize further progress payment for work performed directly by the Contractor or the noncompliant subcontractor until the required payments have been made. The Engineer will continue to authorize progress payments for work performed by compliant subcontractors.

Delete subsection 109.06 (g) and replace with the following:

1. *Good Cause Exception*. If the Contractor has “good cause” to delay or withhold a subcontractor’s progress payment, the Contractor shall notify the subcontractor in writing within seven calendar days after receiving payment from the Department. The notification shall specify the amount being withheld and provide adequate justification for withholding the payment. The notice shall also clearly state what conditions the subcontractor must meet to receive payment. “Good cause” shall include but not be limited to the failure of the subcontractor to make timely submission of required paperwork.

Subsection 109.06 shall include the following:

1. *Monthly Reporting*. For CDOT projects, by the 15th of each month, the Contractor shall record all payments to subcontractors by completing an audit in the B2GNow System. If the contractor has good cause for delay as described in subsection (g), the Contractor shall include the justification in its monthly audit. Once the prime enters a payment to a subcontractor or supplier, the subcontractor or supplier will receive a notice to confirm payment. The subcontractor or supplier shall have fifteen days from the notice to confirm payment or report an issue. If a subcontractor or supplier is also a payor, the subcontractor or supplier shall also report all prompt payment to its subcontractors. If the subcontractor or supplier does not report a prompt payment issue within fifteen days from the Contractor’s monthly reporting, the subcontractor waives CDOT’s assistance in resolving the prompt payment issue and the monthly audit will be closed. This provision should not be construed to limit the subcontractor’s contractual remedies.