

January 20, 2017

REVISION OF SECTION 109  
PROMPT PAYMENT  
(LOCAL AGENCY)

**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 local agency projects.

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

In subsection 109.06, delete (e) and replace with the following:

(e) *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 Local Public Agency (LPA). For the purpose of this section only, work shall be considered satisfactorily complete when the LPA 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.

In subsection 109.06, delete (f) and replace with the following:

(f) *Retainage by the Contractor.* The Contractor may withhold retainage of each progress estimate on work performed by subcontractors. If during the prosecution of the project, a subcontractor satisfactorily completes all work described on Form 205, as amended by changes directed by the Engineer, the following procedure will apply:

1. The subcontractor may make a written request to the Contractor for the release of the subcontractor's retainage.
2. Within ten working days of the request, the Contractor shall determine if all work described on Form 205 has been satisfactorily completed and shall inform the subcontractor in writing of the Contractor's determination.
3. If the Contractor determines that the subcontractor has not achieved satisfactory completion of all work described on Form 205, the Contractor shall provide the subcontractor with written notice, stating specifically why the subcontract work is not satisfactorily completed and what has to be done to achieve completion. A copy of this written notice shall be provided to the Engineer.
4. If the Contractor determines that the subcontractor has achieved satisfactory completion of all work described on Form 205, the Contractor shall release the subcontractor's retainage within seven calendar days.
5. In determining whether satisfactory completion has been achieved, the Contractor may require the subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered subcontractors, suppliers of material and equipment, and others involved in the subcontractor's work have been paid in full. The Contractor may also require any documentation from the subcontractor that is required by the subcontract or by the Contract between the Contractor and the LPA or by law such as affidavits of wages paid, material acceptance certifications and releases from applicable governmental agencies to the extent that they relate to the subcontractor's work.
6. Within 14 calendar days after receiving the Contractor's request, the Engineer will make inspection of all work described on Form 205. The Engineer will measure and furnish the final quantities to the Contractor of the items completed by the subcontractor. Agreement on these final quantities by the Contractor will not constitute the acceptance of the work described on Form 205 by the Engineer.

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7. If the subcontractor performs only a portion of an item of work, the Contractor shall release retainage in accordance with the procedures stated above and when the subcontractor has completed all of the work included in the subcontract, however, final measurement of quantities will not be made until the item of work and all of the work on the associated Form 205 has been completed.
8. If additional quantities of a particular item of work are required at a later date after final measurement has been made, the Contractor shall perform this work in accordance with Contract requirements and at unit bid prices.

For this subsection only, satisfactory completion of all work described on CDOT Form No. 205 is when all tasks called for in the subcontract as amended by changes directed by the Engineer have been accomplished and documented as required by the LPA.

The requirements stated above do not apply to retainage withheld by the LPA from monies earned by the Contractor. The LPA will continue to process the release of that retainage based upon the completion date of the project as defined in the Commencement and Completion of Work special provision.

9. If during the prosecution of the project a portion of the work is partially accepted in accordance with subsection 105.21(a), the Contractor shall release all subcontractors' retainage on the portion of the partially accepted work performed by subcontractors. Prior to the LPA releasing the Contractor's retainage on work that has been partially accepted in accordance with subsection 105.21(a), the Contractor shall submit to the Engineer a certified statement for each subcontractor that has participated in the partially accepted work. The statement shall certify that the subcontractor has been paid in full for its portion of the partially accepted work including release of the subcontractor's retainage. The statement shall include the signature of a legally responsible official for the Contractor, and the signature of a legally responsible official for the subcontractor.
10. The Contractor shall be solely responsible for all additional costs involved in paying retainage to the subcontractors prior to total project completion.

In subsection 109.06, delete (g) and replace with the following:

- (g) *Good Cause Exception.* If the Contractor has "good cause" to delay or withhold a subcontractor's progress payment, the Contractor shall notify LPA and the subcontractor in writing within seven calendar days after receiving payment from the LPA. 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.

Section 109.06 shall include the following:

- (h) *Monthly Reporting.* On a monthly basis, the Contractor shall submit the Form 1418, Monthly Payment Report, to the Engineer along with the project schedule updates, in accordance with subsections 108.03 (b) or 108.03 (c) (3). Failure to submit a complete and accurate Form 1418 shall be grounds for CDOT to withhold subsequent payments or retainage to the Contractor.