NOTICE

This is a project 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 Construction Engineering Services 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 this standard special provision on all projects.

Revise Section 105 of the Standard Specifications to include:

Under **105.22 Dispute Resolution**, revise the eighth paragraph as follows:

**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 outlines the process. …

6th paragraph:

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.

7th paragraph:

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.

8th paragraph:

An audit may be performed by the Department for any dispute or claim. All audits will be completed within 90 days of the request for an audit, provided the Contractor allows the auditors reasonable and timely access to the Contractor’s books and records

Under **105.23 Dispute Review Board**, revise the (f) Pre-Hearing Submittal, 2., (3) paragraph as follows:

1. *Pre-Hearing Submittal*. All Pre-Hearing Submittals shall include only arguments, supporting documentation, quantum, and other information as previously submitted in writing and as previously disputed in the formal dispute process covered in subsection 105.22(b), (c), and (d). …Pre-Hearing Submittals to the DRB are as follows:
2. Joint Statement: At least 20 days prior to the hearing the Joint Statement(s) shall be submitted to the DRB. The parties shall make every attempt to agree upon a Joint Statement of the dispute. If the parties cannot agree on the Joint Statement, each party’s independent statement shall be submitted to the DRB. The Joint Statement shall summarize, in a few sentences, the nature of the dispute(s) and the scope of the desired decision.
3. Position Paper: At least 15 days prior to the hearing, CDOT and the Contractor shall submit by email to the DRB Chairperson their party’s Position Paper. The DRB Chairperson shall simultaneously distribute by email the Position Papers to all parties and other DRB members, if any. The Position Paper shall contain the following:
   1. The basis and justification for the party’s position, with reference to specific contract language and the supporting documents of each element of the disputes.
   2. A list of proposed attendees for the hearing. In the event of any objection by a party, the DRB shall make a final determination as to who attends the hearing.
   3. When the scope of the hearing includes quantum, full cost details will be calculated in accordance with methods set forth in subsection 105.24(b)12. The Scope of the hearing will not include quantum if CDOT has requested,an audit which has not been completed.

Under **105.24 Claims For Unresolved Disputes**, delete the paragraph, (c) Audit and re-number from there, revise from 60 days to 90 days, as shown:

1. In adjustment for the costs as allowed above, the Department will have no liability for the following items of damages or expense:
   1. Profit in excess of that provided in 12.A.(8) above.
   2. Loss of Profit.
   3. Additional cost of labor inefficiencies in excess of that provided in A. above.
   4. Home office overhead in excess of that provided in A. above.
   5. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency.
   6. Indirect costs or expenses of any nature in excess of that provided in A. above.
   7. Attorney’s fees, claim preparation fees, and expert fees.
2. *Region Transportation Director Decision*. When the Contractor properly files a claim, the RTD will review the claim and render a written decision to the Contractor to either affirm or deny the claim, in whole or in part, in accordance with the following procedure.

The RTD may consolidate all related claims on a project and issue one decision, provided that consolidation does not extend the time period within which the RTD is to render a decision. Consolidation of unrelated claims will not be made.

The RTD will render a written decision to the Contractor within 90 days after the receipt of the claim package or receipt of the audit whichever is later. In rendering the decision, the RTD: (1) will review the information in the Contractor's claim; (2) will conduct a hearing if requested by either party; and (3) may consider any other information available in rendering a decision.

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