**NOTICE**

This Standard Special Provision (SSP) revises or modifies CDOT’s Standard Specifications for Road and Bridge Construction. These are the official instructions for its use on CDOT construction projects, and the Construction Engineering Services Branch has reviewed, approved, and issued it. Use as written without change. Do not use modified versions of this SSP on CDOT construction projects. Do not use this special provision on CDOT projects in a manner other than specified in the instructions without approval by CDOT’s Standards and Specifications Unit. The instructions for use appear below.

Other agencies using the Standard Specifications for Road and Bridge Construction to administer construction projects may use this special provision appropriately and at their own risk.

**Instructions for use on CDOT construction projects:**

Use on all local agency projects advertised on or after July 1, 2022.

**Revise Section 109 of the Standard Specifications 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 that has been satisfactorily completed within seven calendar days after receiving payment for 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's subcontracts shall include a prompt payment provision, requiring prompt payment for all subcontractors and suppliers. 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 making the required payments. The Engineer will continue to authorize progress payments for work performed by compliant subcontractors.

**Delete subsection 109.06(f)5 and replace with the following:**

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.

**Delete subsection 109.06(f)8 and replace with the following:**

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 per 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.

**Delete subsection 109.06(f)9 and replace with the following:**

9. If during the prosecution of the project a portion of the work is partially accepted per subsection 105.21(a), the Contractor shall release all subcontractors’ retainage on the portion of the partially accepted work performed by subcontractors. Before the LPA releasing the Contractor’s retainage on work that has been partially accepted per 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.

**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 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.

**Delete subsection 109.06(h) and replace with the following:**

1. *Monthly Reporting.* For LPA 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 109.06(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 the LPA and 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.