# 1

## December 17, 2020

**SECTION 105 CONTROL OF WORK**

Revise Section 105 of the Standard Specifications to include:

**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. Specified time frames may be extended by mutual agreement of the Engineer and the Contractor. In these subsections, when a time frame ends on a Saturday, Sunday or holiday, the time frame shall be extended to the next scheduled work day.

An issue is a disagreement concerning contract price, time, interpretation of the Contract, or all three between the parties at the project level regarding or relating to the Contract. Issues include, but are not limited to, a disagreement resulting from a delay, a change order, another written order, or an oral order from the Project Engineer, including any direction, instruction, interpretation, or determination by the Project Engineer, interpretations of the Contract provisions, plans, or specifications or the existence of alleged differing site conditions.

The Contractor shall bring all issue(s) to the Project Engineer’s attention, in writing, within 30 days of the Contractor being aware of the issue(s). Written notice must take the form of a stand-alone, non-chain e-mail or letter, addressed and delivered to the Project Engineer. If a Contractor provides written notice outside of the 30 day deadline, it shall be presumed that CDOT suffered prejudice. Where the Contractor failed to provide the required notice, the failure to provide notice may be treated as a separate and threshold dispute to be resolved before other related disputes(s) are submitted, addressed, and/or resolved.

~~The Contractor shall be barred from any administrative, equitable, or legal remedy for any issue which meets either of the following criteria:~~

1. ~~The Contractor did not bring the issue to the Project Engineer’s attention in writing within 20 days of the Contractor being aware of the issue.~~
2. The Contractor fails to continually (weekly or otherwise approved by both parties) work with CDOT ~~towards a resolution.~~

A dispute is an issue which the Contractor and CDOT have not been able to resolve and for which the Contractor submits a written formal notice of dispute in accordance with subsection 105.22(b).

A claim is a dispute not resolved at the Resident Engineer level or resolved after a DRB recommendation.

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.

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.

An audit may be performed by the Department for any dispute. Refer to subsection 105.24 for audit requirements. If CDOT does not respond within the specified timelines, the Contractor may advance the dispute to the next level.

When the Project Engineer is a Consultant Project Engineer, actions, decisions, and determinations specified herein as made by the Project Engineer shall be made by the Resident Engineer.

The dispute resolution process set forth in this subsection shall be exhausted in its entirety prior to initiation of litigation or arbitration. Failure to comply with the requirements set forth in this subsection, including the notice

# 2

requirements, shall bar either party from any further administrative, equitable, or legal remedies~~y~~. Subject to the rebuttable presumption of prejudice to CDOT set forth above,Iif a deadline is missed that does not prejudice either arty, further relief shall be allowed.

All written notices of dispute shall be submitted within 30 days of date of the Project Engineer’s Final Acceptance letter; see subsection 105.21(b).

When a project has a landscape maintenance period, the Project Engineer will grant partial acceptance in accordance with subsection 105.21(a). This partial acceptance will be project acceptance of all the construction work performed prior to this partial acceptance.

All disputes and claims related to the work in which this partial acceptance is granted shall be submitted within 30 days of the Project Engineer’s partial acceptance.

Should the Contractor’s dispute use the Total Cost approach for calculating damages, damages will be determined by subtracting the contract amount from the total cost of performance. Should the Contractor’s dispute use the Modified Total Cost approach for calculating damages, if the Contractor’s bid was unrealistic in part, and/or some of its costs were unreasonable and/or some of its damages were caused by its own errors, those costs and damages will be deducted from the total cost of performance to arrive at the Modified Total Cost. The Total Cost or Modified Total Cost basis for calculating damages shall not be available for any disputes or claims seeking damages where the Contractor could have kept separate cost records at the time the dispute arose as described in subsection 105.22(a).