



INDIANA DEPARTMENT OF TRANSPORTATION

STANDARDS COMMITTEE MEETING

Driving Indiana's Economic Growth

REVISED AGENDA

February 19, 2009 Standards Committee Meeting

Added Item No.02 02/19/09

MEMORANDUM

February 3, 2009

TO: Standards Committee

FROM: Mike Milligan, Secretary

RE: Agenda for the February 19, 2009 Standards Committee Meeting

A Standards Committee meeting is scheduled for 9:00 a.m. on February 19, 2009 in the N755 Bay Window Conference Room. Please enter the meeting through the double doors directly in front of the conference room. The following agenda items are listed for consideration.

Page No.

A. GENERAL BUSINESS ITEMS

OLD BUSINESS

(No items on this agenda)

NEW BUSINESS

1. Approval of January 15, 2009 Minutes

B. CONCEPTUAL PROPOSAL ITEMS

OLD BUSINESS

(No items on this agenda)

NEW BUSINESS

1. Create a section in the design manual for the design of roundabouts 3
2. Utility Construction Engineering and Inspection 4

C. STANDARD SPECIFICATIONS, SPECIAL PROVISIONS AND STANDARD DRAWINGS
PROPOSED ITEMS

OLD BUSINESS

(No items on this agenda)

NEW BUSINESS

Item No.01 02/19/09 (2008 SS)	Ms. Rearick	6
Standard Drawing	707-BPBF-03	
Item No.02 02/19/09 (2008 SS)	Mr. Heustis	9
104.02	Differing Site Conditions, Suspension of Work, and Significant Changes in the Character of Work Changed Conditions	
104.02(a)	Differing Site Conditions	
104.02(c)	Significant Changes in the Character of Work	
104.02(d)	Pre-Established Remedies to Changed Conditions	
104.02(d)1	Acceleration	
104.02(d)2	Inefficiencies	
104.02(d)3	Unrecoverable Costs	
104.02(d)4	Unacceptable Cost Calculation Methods	
105.16	Claims for Adjustment and Disputes Notice of Changed Conditions and Claims Contractual Notice of a Changed Condition	
105.16(a)	Claims	
105.16(b)	Required Documentation	
105.16(b)1	Auditing of Claims	
105.16(b)2	Claim Resolution Process	
105.16(c)	Project Level Review	
105.16(c)1	District Office Review	
105.16(c)2	Central Office Review	
105.16(c)3	Determination and Extension of Contract Time	
108.08	Excusable, Non-Compensable Delays	
108.08(a)	Excusable, Compensable Delays	
108.08(b)	Non-Excusable Delays	
108.08(c)	Concurrent Delays	
108.08(d)	Delay Costs	
109.05.2	Allowable Delay Costs	
109.05.2(a)	Labor	
109.05.2(a)1	Insurance	
109.05.2(a)2	Equipment	
109.05.2(a)3	Field Office Costs	
109.05.2(a)4	Escalation Costs	
109.05.2(a)5	Labor Escalation	
109.05.2(a)5a	Materials Escalation or Storage	
109.05.2(a)5b	Equipment Escalation	
109.05.2(a)5c		

cc: Committee Members (11)
FHWA (2)

Mr. Wright
Date: 02/19/09

CONCEPTUAL PROPOSAL

1. CREATE A SECTION IN THE DESIGN MANUAL FOR THE DESIGN OF ROUNDABOUTS

CONCEPTUAL
PROPOSAL TO STANDARDS COMMITTEE

PROBLEM(S) ENCOUNTERED: Conceptual Proposal - create a section in the design manual for the design of Roundabouts

PROPOSED SOLUTION: Form an ad hoc committee to write the section. Ad hoc committee will consist of Richard VanCleave and Brian Zafar (INDOT Stds section) and Craig Parks (American Structurepoint) and ???

APPLICABLE STANDARD SPECIFICATIONS: n/a

APPLICABLE STANDARD DRAWINGS: unknown

APPLICABLE DESIGN MANUAL SECTION: 51- ?

APPLICABLE SECTION OF GIFE: n/a

Submitted By: John Wright

Title: Roadway Services Manager

Organization: INDOT

Phone Number: 232-5147

Date: 1/15/09

Mr. Heustis
Date: 02/19/09

CONCEPTUAL PROPOSAL

2. UTILITY CONSTRUCTION INSPECTION AND ENGINEERING.

CONCEPTUAL
PROPOSAL TO STANDARDS COMMITTEE

PROBLEM(S) ENCOUNTERED: Contracts with limited R/W area for utilities that have significant utility involvement encounter problems when one utility relocates in the wrong location, often by less than 1 - 2 feet, which then does not leave room for the next utility within the R/W. This problem exists when multiple utilities must relocate within a limited space and still comply with regulations governing separation, i.e - gas and electric. When this occurs, contracts can be delayed significantly and on corridor projects, the effect can domino over several contracts.

PROPOSED SOLUTION: INDOT has had satisfactory results on one contract where a unique special provision was used that required the contractor to provide construction engineering and inspection services for the location of utilities relocating within the project. The contractor was responsible for providing staking for the utilities and notifying INDOT if a utility was relocating in the wrong location. Representatives of Project Management, Right-of-Way (Utilities Section) and Construction Management have been discussing the benefits and costs associated with this type specification and would like guidance from the Standards Committee on whether to pursue this further with the ultimate goal of writing a Recurring Special Provision to incorporate the spec on appropriate contracts.

APPLICABLE STANDARD SPECIFICATIONS: Section 105

APPLICABLE STANDARD DRAWINGS: NA

APPLICABLE DESIGN MANUAL SECTION: Chapter 10

APPLICABLE SECTION OF GIFE: TBD

APPLICABLE RECURRING SPECIAL PROVISIONS: None

Submitted By: Ron Heustis

Title: Mgr. of Construction Technical Support

Organization: INDOT

Phone Number: 317-234-2777

Date: 01-28-09

APPLICABLE SUB-COMMITTEE ENDORSEMENT? The 100 Sub-Committee has also discussed this issue and supports further work on this topic.

PROPOSAL TO STANDARDS COMMITTEE

PROBLEM(S) ENCOUNTERED: There is a gap in the camber deviation parameters on Standard Drawing E707-BPBF-03 (as well as on the metric drawing 707-BPBF-03). Part of Note 5 states: "Camber deviation from design camber shall not be more than $\pm 50\%$ if plan camber is 2" or greater or $\pm 1/2$ " if plan camber is less than 1"." Plan cambers between 1" to less than 2" are not addressed.

PROPOSED SOLUTION: Modify Note 5 to the proposal shown on the next page, which incorporates tolerances from the Precast/Prestressed Concrete Institute (PCI).

APPLICABLE STANDARD SPECIFICATIONS: None

APPLICABLE STANDARD DRAWINGS: E707-BPBF-03, & 707-BPBF-03

APPLICABLE DESIGN MANUAL SECTION: None

APPLICABLE SECTION OF GIFE: None

APPLICABLE RECURRING SPECIAL PROVISIONS: None

Submitted By: Anne Rearick (for Jim Reilman, Construction Tech. Support)

Title: Manager, Office of Structural Services

Organization: INDOT

Phone Number: 317-232-5152

Date: January 23, 2009

APPLICABLE SUB-COMMITTEE ENDORSEMENT? None.

REVISION TO STANDARD DRAWINGS

707-BPBF-03 FABRICATION TOLERANCES GENERAL NOTES

Other sections containing
specific cross references:

None

Motion: M
Second: M
Ayes:
Nays:

Action: Passed as submitted; revised

Recurring Special Provisions
affected:

None

___ 20___ Standard Specifications Book

___ Create RSP (No. ___)
Effective ___ Letting
RSP Sunset Date: ___

Standard Sheets affected:

707-BPBF-03

___ Revise RSP (No. ___)
Effective ___ Letting
RSP Sunset Date: ___

Standard Drawing Effective ___

___ Create RPD (No. ___)
Effective ___ Letting
___ Technical Advisory

GIFE Update Req'd.? Y___ N___
By - Addition or Revision

Frequency Manual Update Req'd? Y___ N___
By - Addition or Revision

Withdrawn ___

Received FHWA Approval? ___

GENERAL NOTES :

These notes are for fabrication tolerances for precast prestressed concrete members as shown on Standard Drawing No. E 707-BPBF-01 for box beams and on Standard Drawing No. E 707-BPBF-02 for I-beams.

1. Tolerances shown are maximum permissible variations from the dimensions shown on the plans or shop drawings. Tolerances are not to be considered cumulative. Longitudinal tolerances are based on design length. Casting length shall be adjusted to compensate for shrinkage and plastic flow.
5. Variation of camber shall not be more than 1" on one span nor more than 1/2" between adjacent beams to be measured at time of erection. Camber deviation from design camber shall not be more than ±50% if plan camber is 2" or greater or ±1/2" if plan camber is less than 1".
7. Length of beam tolerance shall be checked after the final curing phase and within three days prior to shipping.
8. Horizontal alignment tolerance shall be checked immediately after removal of forms and strand release and prior to removal from bed.
9. End stirrup bars shall not be more than 2" from the end of the beam.
10. At concrete bearing area, deviation from plane surface when tested in all directions of the plane surface with a steel straightedge shall not be more than ±1/16.
11. Mild reinforcing steel concrete cover tolerance shall be -1/8" to + to +3/8".

Change Note 5 as follows:

5. Variation of camber shall not be more than 1" on one span nor more than 1/2" between adjacent beams to be measured at time of erection. Camber deviation from design camber shall not be more than ± 50% if plan camber is 2" or greater or ± 1/2" if plan camber is less than 1". Camber variation from design camber is as follows:

I Beams & Girders and Bulb Tee Girders..... ± 1/8 in. per 10 ft length with ± 1/2 in. maximum up to 80 ft length
Box Beams..... ± 1/8 in. per 10 ft length with ± 1/2 in. maximum

INDIANA DEPARTMENT OF TRANSPORTATION	
FABRICATION TOLERANCES GENERAL NOTES	
SEPTEMBER 2008	
STANDARD DRAWING NO. E 707- BPBF-03	
	/s/ Richard L. VanCleave DESIGN STANDARDS ENGINEER 09/02/08 DATE
DESIGN STANDARDS ENGINEER	/s/ Mark A. Miller CHIEF HIGHWAY ENGINEER 09/02/08 DATE

SPECIFICATION REVISIONS
PROPOSAL TO STANDARDS COMMITTEE

PROBLEM(S) ENCOUNTERED: The Standard Specifications currently do not directly address many issues related to delays and claims on construction contracts. The specs also do not define a procedure for addressing and resolving claims in a uniform manner.

PROPOSED SOLUTION: Revise the SS to more clearly define notification requirements, the types of delays, what costs are compensable and non-compensable and define a claims resolution process.

APPLICABLE STANDARD SPECIFICATIONS: 104, 105, 108

APPLICABLE STANDARD DRAWINGS: None

APPLICABLE DESIGN MANUAL SECTION: None

APPLICABLE SECTION OF GIFE: 100

APPLICABLE RECURRING SPECIAL PROVISIONS: None

Submitted By: Ron Heustis

Title: Manager of Construction Technical Support

Organization: INDOT

Phone Number: 317-234-2777

Date: Feb 3, 2009

APPLICABLE SUB-COMMITTEE ENDORSEMENT? This concept has been in development for over 2 years and has been reviewed by the 100 Sub-Committee, the INDOT Legal section and has been discussed at numerous meetings with Team Indiana members and ICA.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 104, BEGIN LINE 36, DELETE AND INSERT AS FOLLOWS:

104.02 Differing Site Conditions, Suspension of Work, and Significant Changes in the Character of Work Changed Conditions

~~Code of Federal Regulations 23 CFR 635.109 reads as follows:~~

A changed condition causes the work to substantially differ in kind or nature from the work as required in the original contract. The Department will adjust the contract for changed conditions as described herein. A contract adjustment may revise one or more of the following:

- (a) the work to be performed*
- (b) the time required for the work*
- (c) the amount of compensation due the Contractor*

Changed conditions that will be considered as reason for a contract adjustment are differing site conditions, suspensions of work ordered by the Engineer, and significant changes in the character of the work. A request by the Contractor for a contract adjustment shall be based on one or more of the changed conditions described herein.

SECTION 104, BEGIN LINE 56, INSERT AS FOLLOWS:

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice of a changed condition in accordance with 105.16.

SECTION 104, BEGIN LINE 80, INSERT AS FOLLOWS:

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed in accordance with 105.16.

SECTION 104, AFTER LINE 107, INSERT AS FOLLOWS:

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice of a changed condition in accordance with 105.16.

SECTION 104, BEGIN LINE 122, DELETE AND INSERT AS FOLLOWS:

(d) Pre-established Remedies to Changed Conditions

The Contractor and the Department shall cooperatively work to resolve a request for a contract adjustment due to a changed condition by means of the pre-established remedies described herein.

After receipt of a notice of a changed condition in accordance with 105.16, the Engineer will determine if the Contractor's request for a contract adjustment is justified. The Engineer will respond to the Contractor in writing within 2 business days of the receipt of notification, or other time as mutually agreed, as to whether the request is justified and as to how the changed condition will be remedied.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 104, CONTINUED.

If the Engineer determines that a request for a contract adjustment is justified, the changed condition will be remedied by means of a contract adjustment based on one or more of the following pre-established remedies.

1. *Calculations and payment involving existing pay items in the contract.*
2. *Payment for extra work in accordance with 104.03.*
3. *Extension of contract time in accordance with 108.08.*
4. *Payment for delay costs in accordance with 109.05.2 as allowed by 108.08(b).*

If the impact of a changed condition will not be known for some length of time, the following procedure shall be followed in order to expedite a contract adjustment when the impact of the change can be determined.

1. *After submitting notification of the changed condition, the Contractor shall keep daily records, apart from other records, of all labor, material, and equipment costs incurred for the work affected. The daily records shall identify each operation affected and the location where work is affected.*
2. *The Engineer will also maintain daily records of the work affected from the date of the notification.*
3. *Beginning the week following notification of a changed condition, the Contractor shall meet weekly with the Engineer to exchange and discuss each party's daily records of the work affected during the preceding week.*
4. *The Contractor shall notify the Engineer in writing within three work days of any disagreements with the Engineer's records and include the specific points of disagreement. These points will be addressed by the Engineer at the next weekly meeting.*
5. *Refusal by the Contractor to attend any weekly meeting or to submit daily records at a weekly meeting will constitute a waiver to any objections to the accuracy of the Engineer's records and the Engineer's records will control for purposes of computing any contract adjustment for the changed condition.*

If the Contractor accepts the Engineer's remedy for a changed condition, the contract adjustment will be considered to be full and complete compensation for the changed condition and no further contract adjustment will be made for the circumstances that gave rise to the Contractor's request.

If the Contractor disagrees with the Engineer's remedy for a changed condition, and decides to further pursue compensation, a written notification of a claim may be submitted in accordance with 105.16.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 104, CONTINUED.

Pre-established remedies to a changed condition have the following conditions.

1. Acceleration

If the Department gives written direction for the Contractor to accelerate the work, a contract adjustment will be made specifying the work to be accelerated, the time to be saved by acceleration and the amount of compensation due the Contractor for the acceleration.

The Department assumes no liability for constructive acceleration unless the Contractor has provided written notice of the intent to accelerate the work, there is an excusable delay for which the Department has either improperly rejected the Contractor's request for an extension of contract time or failed to act on the request, and the Contractor has incurred additional costs for the acceleration.

2. Inefficiencies

If a claimed loss of productivity due to a changed condition cannot be isolated and remedied separately, the Department will consider payment for inefficiency costs on the basis of a measured mile analysis performed by the Contractor or other analysis method approved by the Engineer.

If the claimed inefficiency is that work was performed out of scheduled sequence due to the changed condition, the current accepted schedule will be analyzed to determine if the work was performed out of sequence.

3. Unrecoverable Costs

The Department will not make payment for any of the following:

- a. Loss of anticipated profits.*
- b. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency.*
- c. Expense of claim preparation and submission, including but not limited to attorney's fees, consultant's fees and expenses and litigation expenses.*
- d. Interest.*
- e. Home office overhead in excess of that provided for in the contract.*

4. Unacceptable Cost Calculation Methods

The Department will not make any payments for costs calculated using any of the following methods:

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 104, CONTINUED.

- a. *Total cost methods based on calculation of costs as the difference between the Contractor's bid for the work and the Contractor's calculation of the costs for the work.*
- b. *Calculation of home office overhead using the Eichleay Formula or other formulas used to calculate home office overhead due to delay.*

~~The remedy to the changed condition either eliminates the claim by means of calculations involving existing pay items in the contract or limits the amount to be paid. These requirements will be used in reaching a settlement between the Contractor and the Department, except when either party may demonstrate that this does not result in a just and fair resolution. The Engineer will notify the Contractor of the determination~~

SECTION 105, BEGIN LINE 580, DELETE AND INSERT AS FOLLOWS:

105.16 Claims for Adjustment and Disputes Notice of Changed Conditions and Claims

Nothing in this subsection shall be construed as establishing a claim contrary to the terms as set out in 104.02.

(a) Contractual Notice of a Changed Condition

~~If the Contractor deems requests that additional a contract adjustment compensation will be due for a changed condition in accordance with 104.02, work or material not clearly covered in the contract or not ordered as extra work, as defined herein, notification shall be made in writing of the intention to make claim for such additional compensation before the work is begun or expenses relating to the request are incurred. on which the Contractor bases the claim.~~

The written notification of a changed condition shall be submitted to the Engineer and shall include the following minimum information.

1. *A statement that the submittal is notification of a changed condition.*
2. *The date the circumstances believed to have caused the changed condition were discovered and an explanation of how and by whom the changed condition was discovered.*
3. *A detailed and specific statement describing the nature and circumstances of the changed condition.*
4. *A statement of the estimated effect of the changed condition on the controlling operation and the cost and contract time of the project.*

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 105, CONTINUED.

~~If such written notification of a changed condition is not given and the Engineer is not afforded the opportunity to remedy the changed condition, then no request for a contract adjustment will be considered. proper facilities for keeping strict account of actual cost as required, no claim shall be made for such additional compensation. Notification of a changed condition and the estimate of the cost of the change shall not be construed as validation of a changed condition. If the Engineer determines that a contract adjustment is due, payment will be made as provided for herein. Such notice, and the fact that the cost as aforesaid has been accounted for, shall not be construed as proving or substantiating the validity to the claim. If the claim, after consideration, is found to be just, it will be paid as provided herein for force account work. Nothing in this subsection shall be construed as establishing a claim contrary to the terms as set out in 104.02.~~

No contract adjustment will be made for work performed or for expenses incurred prior to the date of notification of a changed condition. The Contractor shall diligently prosecute the work unaffected by the changed condition to the maximum extent possible.

(b) Claims

When the Contractor disputes the Engineer's determination of a remedy for a changed condition and decides to pursue further relief, a written notification of a claim shall be submitted to the Engineer within 15 days of receipt of the Engineer's notification of the remedy. If the Contractor fails to submit a notice of a claim within the time specified, the Contractor shall waive any further rights to a contract adjustment due to the circumstances from which the claim arose.

1. Required Documentation

The Contractor shall submit a claim in writing to the Engineer within 30 days, or other time as mutually agreed, of when the circumstances giving rise to the claim have ended or otherwise been resolved.

The claim shall contain sufficient detail to enable the Engineer to determine the basis and amount of the claim. At a minimum, the following information shall be included in a claim in a format that can readily be analyzed by the Engineer. The format shall include, but not be limited to, document length page numbering, a table of contents and cross references as applicable through out the claim documentation.

- a. A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected by the changed condition.*
- b. The date on which the changed condition resulting in the claim occurred or became evident and an explanation of how and by whom the changed condition was discovered.*
- c. A copy of the notification of changed condition as originally submitted by the Contractor.*

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 105, CONTINUED.

- d. *Copies of the Contractor's daily records of the changed condition as kept in accordance with 104.02(d).*
- e. *The name and function of each individual involved in or knowledgeable about the claim.*
- f. *The specific provisions of the contract which support the claim and a statement of the reasons why the provisions support the claim.*
- g. *A detailed factual statement of any actions taken by the Contractor to mitigate the claim.*
- h. *The identification of documents and the substance of communications relating to the claim.*
- i. *A detailed factual statement supporting the Contractor's contention that the Department's decision was a breach of contract if the claim is related to a decision that the contract leaves to the Department as discretionary or final.*
- j. *The specific amount and basis of costs sought broken down in the categories specified for force account in 109.05, including a separate calculation of markup as allowed in 109.05.*
- k. *The specific amount of contract time extension sought and the basis for the request, including approved and as-built bar chart or critical path method schedules depicting the affected work.*
- l. *A notarized statement, signed by an officer of the Contractor, under the penalties of perjury, that the claim is made in good faith, that no portion of the claim has previously been paid and that the amount of the claim and the supporting documents are true, accurate, and reflect what the Contractor believes to be the Department's liability.*

The Engineer will provide a written notice to the Contractor of receipt of a claim. If the information provided by the Contractor with a claim does not contain sufficient detail to enable the Engineer to determine the basis and amount of the claim, the Engineer will notify the Contractor in writing of the specific details required. The Contractor shall provide the required details within 14 days, or other time as mutually agreed, of receipt of the Engineer's request. If the Contractor fails to provide the requested details within the time frame, the Engineer's original remedy for the changed condition will be the final determination by the Department and the Contractor shall waive any further right to contest the remedy.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 105, CONTINUED.

2. Auditing of Claims

Claims filed by the Contractor against the Department shall be subject to audit at any time following the filing of such claim, whether or not such claim is part of a suit in the courts of the State. The audit may begin a minimum of 30 days after written notice to the Contractor, subcontractor, or supplier and may be extended as mutually agreed by all parties. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. Failure to cooperate shall constitute a waiver by the Contractor of the claim in its entirety. Failure of the Contractor, subcontractor, or supplier to maintain and retain sufficient records to allow the Department's auditor to verify the claim shall constitute a waiver of that portion of the claim that cannot be verified and shall bar recovery.

(c) Claim Resolution Process

1. Project Level Review

The Contractor shall submit the claim to the Engineer at the project level. The Engineer will review the claim and make an effort to resolve the claim at the project level within 30 days of receipt of the claim, or other time as mutually agreed. Meetings may be requested by either the Engineer or the Contractor to discuss the claim in an effort to reach resolution. The Engineer will make a project level ruling on the claim and notify the Contractor in writing of the ruling.

If the Contractor disagrees with the project level ruling or if a ruling is not issued within the specified or agreed upon time, a written request for a District Office review may be submitted to the Engineer within 30 days of receipt of the project level ruling or the end of the time for the ruling to be issued. Failure to submit a request for District Office review within the specified time will constitute an acceptance of the project level ruling by the Contractor and a contract adjustment will be made in accordance with the ruling. The contract adjustment will be considered as full and complete compensation for the changed condition and the Contractor shall waive any right to further contest the ruling.

When a District Office review of the project level ruling is requested, the claim will be sent from the project office to the District Office for the review. The Contractor shall not modify the basis of the claim or the method for calculating the amount claimed after submittal to the District Office.

2. District Office Review

The Engineer will review the claim as submitted to the District Office. Meetings may be requested by either the Engineer or the Contractor to discuss the claim in an effort to reach resolution.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 105, CONTINUED.

For claims with a total value less than or equal to \$150,000, 20% of the original contract amount and 100 days of contract time extension, the Engineer will review the project level ruling and issue a written District Office ruling within 45 days, or other time as mutually agreed, of the Contractor's request for a District Office claim review. A claim review by the District may affirm, overrule, or modify the project level ruling. The District ruling will specify the portions, if any, of the project ruling that are being overruled or modified and the rationale supporting the portions overruled or modified.

The Contractor may accept or reject a claim review ruling made by the District Office. If the Contractor accepts the ruling, it will be considered as the final decision by the Department and a contract adjustment will be made in accordance with the ruling.

If a District ruling is rejected, the Contractor may submit a written request for a final hearing before a District Claim Review Board. The request shall be submitted to the Chief Engineer within 30 days of the Contractor's receipt of the District ruling. The Chief Engineer will respond in writing to the Contractor and will convene a Board to review the claim. Failure to submit a request for a hearing within the specified time will constitute an acceptance of the District Office ruling by the Contractor and a contract adjustment will be made in accordance with the ruling. The contract adjustment will be considered as full and complete compensation for the changed condition and no further claim shall be made for the circumstances that gave rise to the claim.

The District Claim Review Board will consist of 3 Department personnel selected by the Chief Engineer and will include 1 member from District Construction in the District involved in the claim and 2 members from the Division of Construction Management. The Chief Engineer will assign one member as the chairperson who will then schedule a hearing with the Contractor at a mutually agreed time and location. The Contractor will be given sufficient time at the hearing to present arguments and exhibits in support of the claim. The Board will issue a written decision within 30 days of the hearing and the decision will be considered as the final decision by the Department and no further appeal will be considered by the Department. A contract adjustment will be made in accordance with the decision of the Board and will be considered as full and complete compensation for the changed condition and no further claim shall be made for the circumstances that gave rise to the claim.

For claims with a total value greater than \$150,000 or 20% of the original contract amount or 100 days of contract time extension, the District will forward the claim, along with the project level ruling and a District Office written opinion to Central Office for a ruling. The Contractor shall not modify the basis of the claim or the method for calculating the amount claimed after submittal to Central Office.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 105, CONTINUED.

3. Central Office Review

The Engineer will review the claim as submitted to Central Office from the District. Meetings may be requested by either the Engineer or the Contractor to discuss the claim in an effort to reach resolution.

The Engineer will review the claim and issue a written final ruling within 60 days, or other time as mutually agreed, of receipt of the claim from the District. A claim review ruling by Central Office may affirm, overrule, or modify the ruling made at the project level. The ruling will specify the portions, if any, of the project ruling that are being overruled or modified and the rationale supporting the portions overruled or modified.

The Contractor may accept or reject a claim review ruling made by Central Office. If the Contractor accepts the ruling, it will be considered as the final decision by the Department and a contract adjustment will be made in accordance with the ruling.

If a Central Office ruling is rejected, the Contractor may submit a written request that the matter be discussed before a civil mediator. The request shall be submitted to the Chief Engineer within 30 days of the date of the Central Office ruling. Failure to request mediation within the specified time shall constitute acceptance of the Central Office ruling by the Contractor and a contract adjustment will be made in accordance with the ruling. The contract adjustment will be considered as full and complete compensation for the changed condition and no further claim shall be made for the circumstances that gave rise to the claim.

Upon receipt of the request for civil mediation, the parties will select a mutually agreed upon certified mediator from the list of mediators eligible to perform civil mediations in the State of Indiana. The mediator shall be familiar with the highway and bridge construction industry but shall not have any financial interests in the parties. The mediation shall be conducted in Indianapolis, Indiana pursuant to the applicable rules of the Indiana Supreme Court governing civil mediations in the State of Indiana. The mediator will schedule the mediation as soon as practicable, preferably within 60 days of selection. In the event settlement is reached, a summary of agreement will be prepared. Either party or the mediator may declare the mediation to be unsuccessful. By requesting mediation, it is agreed that, as with other civil mediations, the discussions and proceedings at mediation are considered part of settlement negotiations and are inadmissible in any civil proceeding.

The Contractor and the Department mutually agree that use of the claim resolution process up to and including the utilization of a mediator is a condition precedent to the filing of any lawsuit concerning claims or alleged breaches of the Contract. The costs and expenses associated with use of the mediator shall be borne by both parties equally. Each party to the mediation shall bear its own costs in preparation and participation.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 108, BEGIN LINE 323, DELETE AS FOLLOWS:

If the Contractor finds it impossible for reasons beyond its control to complete the work within the contract time as specified prior to the expiration of the contract time, a written request in accordance with 105.16 may be made for an extension of time setting forth therein the reasons which will justify the granting of the request. A plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the contract controlling operation was delayed ~~because of conditions beyond the control and without the fault of the Contractor, such as acts of the public enemy, acts of Government, fires, floods, above normal inclement weather, lightning, tornadoes, earthquakes, epidemics, or strikes, it may~~ due to an excusable delay under 108.08(a) or 108.08(b), the Department will extend the contract time for completion in such amount as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion. ~~The Department will not extend contract time for a non-excusable delay under 108.08(c).~~

SECTION 108, AFTER LINE 417, INSERT AS FOLLOWS:

(a) Excusable, Non-Compensable Delays

Excusable, non-compensable delays are delays that are not the fault or responsibility of the Contractor or the Department. The following are excusable, non-compensable delays:

- 1. Delays due to acts of the public enemy, civil disturbances, acts of Government or political subdivision other than the Department.*
- 2. Delays due to floods, lightning strikes, tornadoes, earthquakes or other cataclysmic phenomena of nature.*
- 3. Delays due to fires or epidemics.*
- 4. Delays due to labor strikes that are beyond the Contractor's reasonable power to settle.*
- 5. Extraordinary delays in material deliveries the Contractor or its suppliers cannot foresee or avoid resulting from freight embargoes, government acts or wide-area material shortages. Delays due to the Contractor's, subcontractor's or supplier's insolvency or mismanagement are not excusable.*
- 6. Delays due to above normal inclement weather as defined in 101.02.*
- 7. Delays due to changes in quantities that are not significant changes as defined in 104.02(c).*

The Department will extend the contract time for completion but will not pay for any costs associated with an excusable, non-compensable delay.

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SECTION 108, CONTINUED.

(b) Excusable, Compensable Delays

Excusable, compensable delays are delays that are not the fault or responsibility of the Contractor and are the fault or responsibility of the Department. The following are excusable, compensable delays:

- 1. Delays due to differing site conditions in accordance with 104.02(a), significant changes in the character of work in accordance with 104.02(c), or extra work in accordance with 104.03.*
- 2. Delays due to suspension of work ordered by the Engineer in accordance with 104.02(b).*
- 3. Delays due to work that utilities or other third parties perform within the project limits.*

The Department will extend the contract time for completion and will pay for delay costs covered under item 1 above in accordance with 104.03.

The Department will make payment for delay costs under items 2 and 3 above in accordance with 109.05.2.

(c) Non-Excusable Delays

Non-excusable delays are delays that are the fault or responsibility of the Contractor. The Department will not extend the contract time or compensate the Contractor for delay costs due to non-excusable delays.

(d) Concurrent Delays

Concurrent delays are separate delays to the controlling operation or critical path that occur at the same time. When an excusable, non-compensable delay is concurrent with an excusable, compensable delay, the Department will extend the contract time but will not make payment for delay costs. When a non-excusable delay is concurrent with an excusable delay, the Department will not extend the contract time and will not make payment for delay costs.

SECTION 109, AFTER LINE 643, INSERT AS FOLLOWS:

109.05.2 Delay Costs

When the Engineer determines that an excusable, compensable delay has occurred as defined in 108.08(b), the Department will pay for the costs incurred by the Contractor as a result of the delay. The Department will not pay for unrecoverable costs as defined in 104.02(d) and will not make duplicate payment for compensation made in accordance with 109.05.

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SECTION 109, CONTINUED.

The Department will not make payment for delays that occur during the period from December 1 through March 31 unless the Contractor's current accepted progress schedule, as required by 108.04, indicates work on the controlling operation or critical path during this period.

The Contractor shall provide satisfactory documentation to support payment for delay costs. The Department will not make any payment for delay costs until the documentation is submitted.

Payments made under this specification shall constitute full compensation for all delay costs and associated costs, including overhead.

(a) Allowable Delay Costs

1 Labor

Payment will be made for all necessary salaried and non-salaried personnel that must remain on the project, as approved by the Engineer, during the delay period and cannot be assigned to unaffected work. Necessary personnel will include field superintendents, assistants, watchmen, clerical and other field support staff, and those persons required for maintenance within the project limits, including maintenance of traffic control devices, maintenance of erosion and sediment control measures and similar activities as approved by the Engineer. Payment for labor costs will be calculated in accordance with 109.05(b)1.

2 Insurance

Payment will be made for the increased cost of insurance resulting directly from the delay and will be calculated in accordance with 109.05(b)2.

3 Equipment

Payment will be made for idle equipment that must remain on the project, as approved by the Engineer, during the delay period and cannot be used for active work. Payment for idle equipment will be calculated in accordance with 109.05(b)4.

If the Engineer determines that idle equipment should not remain on the project, the Department will pay for the cost to demobilize the equipment during the delay and remobilize it at the end of the delay.

4 Field Office Costs

Payment will be made for the cost to maintain a Contractor's field office, if determined necessary by the Engineer, during the delay period.

Field office costs include, but are not limited to, the Contractor's field office facilities, tool trailers, office equipment rental, temporary toilets, incidental supplies, and utility expenses. Payment will be made only for the actual costs incurred during the delay period as documented on paid invoices.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS

SECTION 109, CONTINUED.

5 Escalation Costs

Payment for escalation costs due to an excusable, compensable delay will be limited to the escalated cost of labor, materials and equipment on that portion of the work which is delayed beyond an original intermediate completion date or contract completion date and is caused to be performed in the next calendar year. Escalation costs will only be paid if the delay forced the work to be performed during a period when the costs were higher than when the work was planned to be performed as shown on the accepted schedule prior to the delay. The Contractor shall submit satisfactory documentation of escalation costs in a format approved by the Department.

a. Labor Escalation

Payment for escalated labor costs will be calculated as the difference in labor cost between the time the work was performed and the time the work was planned. Labor costs will be calculated in accordance with 109.05(b)1 except that no markup will be paid for labor escalation.

b. Materials Escalation or Storage

Payment for escalated material costs will be calculated as the difference in the material cost between the time the work was performed and the time the work was planned. No material escalation cost will be paid for any item covered by a separate escalation or indexing clause under the contract.

The Department will pay for storage of materials, as approved by the Engineer, due to the delay. Only the actual cost of storing the materials will be paid. No markup will be paid for materials storage.

c. Equipment Escalation

Payment for equipment escalation costs will be calculated as the difference between the Rental Rate Blue Book FHWA hourly rate at the time the work was performed and the Rental Rate Blue Book FHWA hourly rate at the time the work was planned. No markup will be paid for equipment escalation costs.

REVISION TO STANDARD 2008 STANDARD SPECIFICATIONS
SECTION 109, CONTINUED.

Other sections containing
specific cross references:

104.02
105.06 Pg 39
105.16 Pg 48
107.20 Pg 77
108.08 Pg 84
109.03 Pg 97

104.02(a)
716.05 Pg 563

108.08
108.03 Pg 79
108.09 Pg 87

Recurring Special Provisions
affected:

None

Standard Sheets affected:

None

Motion: M
Second: M
Ayes:
Nays:

Action: Passed as submitted; revised

___ 20___ Standard Specifications Book

___ Create RSP (No. _____)
Effective _____ Letting
RSP Sunset Date: _____

___ Revise RSP (No. _____)
Effective _____ Letting
RSP Sunset Date: _____

Standard Drawing Effective _____

___ Create RPD (No. _____)
Effective _____ Letting
___ Technical Advisory

GIFE Update Req'd.? Y___ N___
By - Addition or Revision

Frequency Manual Update Req'd? Y___ N___
By - Addition or Revision

Withdrawn _____

Received FHWA Approval? _____