

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISIONS
FOR
CONTRACT DISPUTE RESOLUTION PROCEDURE**

These Special Provisions supplements and where in conflict supercede the provisions of Sections 104.06, 105.18, 108.07, 109.04 and 109.10 of the 1999 Standard Specifications for Highway Construction, English and Metric, as applicable. Units of measurement are provided in the subsections in both English and Metric equivalents. The units applicable for this project will be those specified in the project plans.

SECTION 110

CONTRACT DISPUTE RESOLUTION PROCEDURE

SECTION 1.

- (a) Contractors and Resident Engineers should use all reasonable efforts to reach accord as to changes and perceived changes in the nature and quantity of work to be performed. However, if the Contractor and the Resident Engineer cannot reach an immediate agreement which can be supported by a supplemental agreement under the contract or a change in plans, it will be the responsibility of the Contractor to initiate a claim. Claims must be initiated by providing oral notice of intent to file a claim followed, with written confirmation of the notice within seven (7) calendar days as provided in the Standard Specifications Section 104.06. The Contractor must provide written notice of intent to file a claim to the Resident Engineer identifying work which the Contractor believes is not covered by the contract before starting on the disputed work. If the Contractor believes that work in progress may, due to changed conditions, have become subject to a claim, the Contractor must submit his written notice of intent to file a claim before continuing with the affected work. The submission of a notice of intent to file a claim by a contractor in accordance with the Standard Specification Section 104.06 is a mandatory prerequisite for the consideration by the Department of any claim submitted under the special provision text. The notice of intent to file a claim is, therefore, a condition precedent under the terms of this contract. Failure to provide the required notice of intent to file a claim shall constitute a waiver of the claim.
- (b) The claim must be submitted in the form required by Section 105.18 within ninety (90) days of completion of the disputed or affected work. Failure to submit the claim within ninety (90) days will preclude recovery of extra compensation or award of additional time for the disputed or affected work.
- (c) The claim will contain all of the information and the certification required by Section 105.18 when submitted. Requests for additional compensation will be documented as required by Section 109.04. Only those items listed in Section 109.04 will be considered as compensable for disputed or affected work. Requests for extension of contract time for completion of disputed or affected work will be considered in accordance with Section 108.07. Requests for extension of contract time must be supported by a critical path method (CPM) schedules prepared in accordance with the Standard Specification Section 108.03 (b) reflecting both the planned construction schedule and the actual sequence of the construction. Compensation for delays caused by disputed or affected work will be paid only for those items listed in Section 109.10.
- (d) Time for claims review by the Resident Engineer as specified in Section 105.18 will begin upon receipt of the claim by the Resident Engineer and determination by the Resident Engineer that the claim is complete. A claim is complete when the claim contains all information specified by Section

105.18 and such additional supporting information or documents as the Resident Engineer may deem necessary for proper evaluation of a specific claim. If additional information is required, the Resident Engineer shall within thirty (30) days of receipt of the claim, notify the Contractor in writing stating what additional information is required. If the Resident Engineer requires additional information or documentation, the Contractor shall have fifteen (15) days from the date of receipt of the Resident Engineer's request to provide the required information or documentation. Failure to provide requested information or documentation within the specified time shall void the claim and will preclude recovery of extra compensation or award of additional time for the disputed or affected work.

SECTION 2.

- (a) In the event that a Contractor's claim is denied in whole or in part by the Resident Engineer, the Contractor may appeal this denial to the Assistant Director-Operations by forwarding a copy of his claim in person or by certified mail with all supporting documents, the decision of the Resident Engineer (if any), any written agreement concerning the claim, and a statement setting forth in detail the grounds upon which the Contractor appeals the Resident Engineer's decision. The appeal must be submitted to the Assistant Director-Operations by the Contractor within twenty (20) days of the denial of the claim. If the appeal is not submitted within this time frame, the decision of the Resident Engineer shall become final and binding.
- (b) Upon receipt of the appeal and all documents set forth in Subsection (a) of this section, the Assistant Director-Operations shall review the Contractor's claim and determine if additional documentation, information, or other factual data are required to make a final decision on the Contractor's claim. If additional information is required, the Assistant Director-Operations shall, within fifteen (15) days, notify the Contractor in writing stating what additional information is required. The Contractor shall thereafter have fifteen (15) days of receipt of the request for information to provide the requested information unless otherwise agreed in writing. Failure to provide the requested information within the time provided shall void any claims dependent upon such additional information and shall result in the decision of the Resident Engineer becoming final and binding as to all matters for which additional information was requested. Within forty-five (45) days of receipt of the requested additional information, or if additional information is not requested, within forty-five (45) days of the receipt of the appeal, the Assistant Director-Operations may dispose of the claim by change order or supplemental agreement in accordance with Section 104.04 of the Standard Specifications. If no agreement is executed between the Department and the Contractor within that forty-five (45) days, the Assistant Director-Operations within five (5) days thereafter shall issue his decision on each item of the Contractor's appeal. The decision shall state, as to each item of the appeal, whether the item is approved in whole or in part, or disapproved. If all or part of an item is disapproved, the Assistant Director-Operations shall cite his basis for disapproval. The Assistant Director-Operations's decision shall be mailed to the Contractor by certified mail. In the event that the Assistant Director-Operations shall fail to issue his decision in the time provided in this section and any extensions agreed to in writing by the Department and the Contractor, the claim shall be deemed denied as to any matter not previously agreed to in writing and the Contractor may proceed with his claim as set forth in Section 3.

SECTION 3.

- (a) If the Contractor is dissatisfied with the final decision of the Assistant Director-Operations, and desires to further pursue resolution of the disputed claim, the Contractor shall request mediation of his claim by the American Arbitration Association or other designated dispute resolution service

provider in accordance with the current edition of the Construction Industry Dispute Resolution Rules of the American Arbitration Association, as such rules are herein modified. A request for mediation shall be made within fifteen (15) days of the receipt of the Assistant Director-Operation's final decision or all issues raised in the denied claim shall be waived. If the Contractor elects to submit his/her claim to mediation, only issues raised by the initial claim shall be considered ripe for submission for mediation.

- (b) The Construction Industry Dispute Resolution Rules of the American Arbitration Association for mediation construction disputes as are modified and amended in appropriate part as follows:
 - (1) The Contractor may initiate mediation by filing a written request for mediation with the Dallas Regional Office of the American Arbitration Association or as directed by other such dispute resolution service provider as may be designated by the Department, and by sending a copy of the request to the Department's Assistant Director-Operations. The request for mediation sent to the American Arbitration Association or other designated dispute resolution service shall be accompanied by the appropriate administrative fee as set forth in the most current fee schedule of the service provider.
 - (2) The mediator shall fix the date and time of each mediation session. The mediation shall be held at the Department of Transportation Building in Oklahoma City, Oklahoma, or at any other convenient location agreeable to the mediator and the parties.
- (c) Mediation may be continued as required to promote optimum utilization and success with this dispute resolution vehicle. If mediation is considered at an impasse by the mediator, the mediator may terminate mediation as provided by the mediation rules.

SECTION 4.

- (a) If mediation is unsuccessful and the Contractor desires to further pursue resolution of a disputed claim, the Contractor shall seek relief through district court as provided by the laws of the State of Oklahoma. In all such instances, only those claims which have been presented for consideration in accordance with the Standard Specifications and these special provisions may be referred to district court. In all such actions, venue shall be the District Court in Oklahoma County. It is specifically agreed by the parties to this contract that, as an exception to 12 O.S. Section 936, actions brought under this contract shall not be subject to the award of costs or attorney's fees to the prevailing party.
- (b) The Department and the Contractor may jointly petition for any action to be referred for binding arbitration by order of the district court. As a part of any joint petition for binding arbitration, the parties shall stipulate that such arbitration shall be conducted under the current edition of the Construction Industry Dispute Resolution Rules for arbitration of the American Arbitration Association and that such rules shall be modified and amended in appropriate part as follows:
 - (1) Arbitration shall be initiated in the following manner: The initiating party (hereinafter Claimant) shall file at the Dallas Regional Office of the American Arbitration Association or as directed by other such dispute resolution service provider as may be designated by the Department three (3) copies of the notice and three (3) copies of the arbitration provisions of the contract, together with the appropriate administration fee as provided in the most current administration fee schedule of the service provider. The American Arbitration Association or other designated dispute resolution service provider shall give notice of the filing to the Assistant Director-Operations of the Department as respondent and to other respondents. A respondent may file an answering statement in duplicate with the American Arbitration Association or other designated dispute resolution service provider within twenty (20) days after notice of the filing, in which event the respondent shall at the same time send a copy of the answering statement to the Claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of any counterclaim, the amount involved, if any, and the remedy

sought. If the Department files a counterclaim the Association or other designated dispute resolution service provider, that service provider shall bill the Department for the fee as provided for in the most current fee schedule. If no answering statement is filed within the stated time, it will be treated as denial of the claim. Failure to file an answering statement shall not operate to delay the arbitration.

(2) After filing of a claim, if either party desires to amend a claim or counterclaim to correct administrative errors or defects, the amendment shall be made in writing, and filed with the American Arbitration Association or other designated dispute resolution service provider. No changes may be made as to the elements of the claim, its form, substance, or amount which will alter or revise the claim as originally submitted for consideration of the Department. A copy of an amendment correcting an administrative error or defect shall be mailed to the other party or parties who shall have a period of twenty (20) days from the date of such mailing within which to file an answer with the American Arbitration Association or other designated dispute resolution service provider. After the arbitrator is appointed, however, no amendment of a claim may be submitted except with the arbitrator's consent.

(3) No abbreviated or "Fast Track" procedures shall be utilized for arbitration.

(4) Hearings shall be held at the Department of Transportation building in Oklahoma City, Oklahoma, except as may be otherwise agreed by the arbitrator and the parties.

(5) Except as mutually agreed by the parties, the dispute shall be heard and determined by one neutral arbitrator.

(6) The arbitrator shall set the date and time for each hearing. The American Arbitration Association or other designated dispute resolution service provider shall mail to each party notice thereof at least twenty (20) days in advance of the date set for hearing, unless the parties by mutual agreement, waive such notice or modify the terms thereof.

(7) Before proceeding with the first hearing, the arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator shall require witnesses to testify under oath to be administered by the arbitrator.

(8) A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time, and place of the hearing, and the presence of the arbitrator, the parties, and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. The arbitrator shall also make a specific finding as to whether or not jurisdiction exists to conduct an arbitration. In some cases, part or all of the above will have been accomplished at the preliminary hearing conducted by the arbitrator pursuant to the arbitration rules.

The Claimant shall then present evidence to support its claim. It shall be the burden of the Claimant to prove his/her claim by the preponderance of the evidence. If the Claimant fails to produce evidence sufficient to support his/her claim, the arbitrator may, upon the request of the defending party, or on his/her own motion, dismiss the complaint or any part thereof.

The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and business addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and a neutral arbitrator other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to the neutral arbitrator shall be directed to the American Arbitration

Association or other designated dispute resolution service provider for transmittal to the arbitrator.

(9) When the arbitrator has determined that all evidence necessary for a decision, including briefs by the parties if required, has been submitted, the hearing will be closed. In his/her deliberations, the arbitrator shall consider all evidence and testimony offered and the credibility, qualifications, and professional experience of all witnesses. The arbitrator shall in his/her deliberations consider the contract, standard specification, special provisions, and plans as those documents determine the contractual relationship of the parties. The arbitrator shall give full force and effect to all terms and conditions of the contract documents; shall interpret the words contained therein in accordance with their plain and usual meaning; and shall endeavor to harmonize the terms of the contract in the precedential order established in the standard specifications. The arbitrator's decision shall be announced by means of an award which shall be in writing and shall state the finds of fact and applicable provisions of the contract upon which the arbitrator relied to make the award. The award shall be signed by the arbitrator. It shall be executed in the manner required by law.

(10) The arbitrator may grant any remedy or relief the arbitrator deems just and equitable and within the scope of the contract between the parties, including, but not limited to, specific performance of the contract. The arbitrator shall not award interest, costs of the prosecution, or defense of the claim, or attorney fees.

(11) The expenses of witnesses for either side shall be paid for by the party producing such witnesses. All expenses of the arbitration, including required travel and other expenses of the arbitrator, American Arbitration Association or other designated dispute resolution service representatives, and the costs of any witness or proof produced at the direct request of the arbitrator, shall be borne equally by the parties and shall be set forth as part of the decision.

(12) The American Arbitration Association or other designated dispute resolution service provider may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case. In order that payment for services may be in accordance with State statutes, the American Arbitration Association or other designated dispute resolution service provider will invoice the Department in accordance with the terms of an applicable contract for dispute resolution, addressed to the Assistant Director-Operations, for the Department's deposit and fees. The Assistant Director-Operations, will arrange for prompt payment of invoices. Processing of an invoice to the Department for arbitration services and claims for payment of those services shall not delay processing of the request for arbitration.

(13) The decision or award by the arbitrator when made shall be final and non-appealable except as provided in Section 801 et seq. of Oklahoma Statutes, Title 15. Both the Contractor and the Department of Transportation shall be bound by the arbitration award for all purposes, and judgment may be entered upon it in accordance with applicable law.

STATE OF _____)

COUNTY OF _____)

I, _____, do hereby acknowledge that I am aware of the provisions of the Contract Dispute Resolution Procedure and do specifically agree to the determination of any disputed claim of the Contractor under this procedure.

Signature of Company Official

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

My Commission Expires:
