



# CONSTRUCTION BULLETIN

Colorado Department of Transportation  
Project Development Branch

Changing Binder Grade, Source, or Both  
2008 Number 8, Page 1 of 2  
Date: July 29, 2008  
Revised August 4, 2008

## Changing Binder Grade, Source, or Both

This bulletin addresses possible actions when a contractor submits a proposal to change the binder grade, the binder source, or both due to the current asphalt and polymer shortage.

In accordance with subsection 108.07 of the Standard Specifications, if the specified binder is not available when required, the Contractor would be entitled to an excusable, non-compensable delay. Obviously it may not be in CDOT's best interests to delay the project. Therefore, the Project Engineer, with approval from the Region Program Engineer and Region Materials Engineer may consider compensating the Contractor for justifiable additional costs for asphalt cement binder obtained from unanticipated available sources.

Changing binder grade is a materially significant change in the work. Subsection 104.02(c) of the Standard Specifications states that:

“The term “significant change” shall be construed to apply only to the following circumstances:

- (1) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction,”

Subsection 104.02(c) further states that:

“If the alterations or changes in quantities significantly change the character of the work under the Contract, whether such alterations or changes are in themselves significant changes to the character of the work, or by affecting other work cause such other work to become significantly different in character, **an adjustment, excluding loss of anticipated profit, will be made to the Contract.**”

If one of the following changes is approved by the Region Program Engineer and Region Materials Engineer, the change requires a change order:

1. A change in binder grade
2. A change in binder source with an accompanying change in cost
3. A change in both binder grade and binder source

The change order shall delete the Hot Mix Asphalt, Stone Matrix Asphalt, or Asphalt Cement item and add a new corresponding item; authorize a change in binder source; or both. The change order shall include a negotiated price for the item with the new binder. That price should reflect what it would cost the Contractor to perform the work today or at some point in the future.

If a region does not want or cannot afford to increase the price on a project, or a change in the binder would not work from a pavement design standpoint, then that region may consider one of the three options in Construction Bulletin 2008-6, Polymer and Asphalt Cement Shortage, July 7, 2008.

It is suggested that getting documentation providing proof of planned binder price at the time of bid from the Contractor and invoices for the new binder and adding or subtracting the difference from the original bid price would be an acceptable method of justifying the price.



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In accordance with subsection 401.02(b), if a new binder source is accepted, "a new job-mix formula shall be established before the new material is used."

There are discussions ongoing concerning the affected projects. Further Construction Bulletins will be released as soon as possible with supplemental information to Construction Bulletin 2008-6. Other additional information will be provided as needed. Please forward any pertinent information you may receive from the contractors to your Area Engineer.

If you have questions, please contact your Area Engineer in Project Development.