



# CONSTRUCTION BULLETIN

Colorado Department of Transportation  
Project Development Branch

CMO Guidelines for HMA/SMA/AC Binder  
Grade Changes, Source Changes, or Both  
2008 Number 9, Page 1 of 2  
Date: August 21, 2008

## CMO Guidelines for HMA/SMA/AC Binder Grade Changes, Source Changes, or Both

This Construction Bulletin provides guidance for writing Contract Modification Orders (CMOs) to construction contracts for HMA, SMA, and AC binder grade changes, source changes, or both. This bulletin should be used in conjunction with Construction Bulletins 2008-6, *Polymer and Asphalt Cement Shortages* and 2008-8, *Changing Binder Grade, Source, or Both*.

The Contractor must document “due diligence” in seeking the contract specified Asphalt Cement (AC) before the project engineer makes any changes to the Contract, whether to change grade or binder, suspending contract time, or terminating the contract. Letters from the prime contractor, paving contractor, or AC supplier which outline the specific situation on the project and document the attempts to obtain the contract specified AC should be attached to the CMO explanation letter as back up documentation.

The AC Cost Adjustment Specification CAN NOT be added to projects retroactively. Projects which are using the AC Cost Adjustment Specification should NOT be using a change order to further adjust the prices.

The Form 90 authorizing work to start should specifically address whether the binder, grade or both is being changed on the project and why. The intent is to pay for the difference in AC costs only.

If it is necessary to start work before the CMO can be written, then a Form 105 can be used to authorize work to begin. As required by Section 120.7.3.1 of the 2002 Construction Manual (Revised July 2008):

*“The authorization must describe the specific work being authorized, the basis of payment, the applicable specifications, and the method of measurement. The basis of payment will be one of the following: Contract unit prices, agreed unit prices, lump sum or force account. When the basis of payment is agreed unit price or lump sum, the memo must include the actual agreed unit price or lump sum. The change order should be completed and executed as soon as possible.”*

All changes in binder grade or source shall be reviewed with the Region Materials Engineer and Program Engineer prior to implementation. Concurrence of the Region Materials Engineer and Program Engineer should be included in the CMO explanation letter.

FHWA has asked that the following language be included on the Form 90 for these change orders:

*“This CMO is written in response to current asphalt industry supply shortages that are beyond the control of the Colorado Department of Transportation and the prime contractor. An AC changed binder source and/or grade is considered a design change and not a retroactive price adjustment.”*

The following approaches are offered when changing pay items. Note that when a separate item is added to pay for AC price fluctuations, no price justification is necessary for that item in the letter, since cost will be determined directly from certified invoices.



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1. Use the HMA/SMA/AC items at the unit prices bid in the original Contract. Where the AC prices cannot be held for the duration of the Contract, add by CMO an item to pay for AC price fluctuations on a dollar basis, to be paid monthly. Payment would be based on the difference between a certified invoice or copy of the contract from the original supplier at bid time and a certified invoice from the current supplier. These adjustments can be positive or negative; loading is not allowed.
2. Delete the original HMA/SMA/AC items at the unit prices bid in the original Contract and add new HMA/SMA/AC items at new unit prices by CMO. Where the AC prices cannot be held for the duration of the contract, add by CMO an item to pay for AC price fluctuations on a dollar basis, to be paid monthly. Payment would be based on the difference between a certified invoice or copy of the contract from the supplier for the new items at the time they were added to the Contract and a certified invoice from the current supplier. These adjustments can be positive or negative; loading is not allowed.
3. Pay for HMA/SMA/AC items, whether original items or added by change order, and add by CMO an item to pay for AC price fluctuations on a dollar basis, to be paid when the asphalt paving work is complete. Payment would be based on the difference in price of AC at the unit price and the current AC price as outlined in #1 and #2, above. These adjustments can be positive or negative; loading is not allowed.

Time Extensions may be necessary depending upon how these changes will impact the project schedule. As discussed in Construction Bulletin 2008-6, time extensions related to binder grade and source changes are excusable, noncompensable delays except for possible changes in unit price for the Asphalt Cement as discussed in Construction Bulletin 2008-8. Adding calendar days, adding work days or extending the completion date on a project must be done with a CMO in accordance with Standard Specification subsection 108.07.

Suspending contract time does not require a CMO and should be documented on a Form 105 and in the time count. It may be advisable to wait until after time has resumed before writing a CMO to change binder grade, or source, or both.

Terminating a contract requires the written concurrence of the Chief Engineer with follow up letter to the Contractor, but no CMO. Contact your Area Engineer for assistance with this process and potential termination claims.

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