**Incremental Encumbrance and Contractor’s Payment Schedule Process**

In order to meet CDOT’s Program Management and Cash Management goals, CDOT needs to make sure we are efficiently using the spending authority by incrementally encumbering certain projects. The purpose of this Bulletin is to provide information on how to review the contractor’s payment schedule (drawdown schedule) and manage the incremental encumbrance process on CDOT construction projects. (Note that the Specifications call the drawdown schedule a payment schedule. We will use the term drawdown schedule when referring to the data generated by CDOT and payment schedule when the drawdown data is generated by the contractor.) A CDOT-administered project will be incrementally encumbered when the Program Management Office (PMO) and Office of Financial Management and Budget (OFMB) determine it is in CDOT’s interest to incrementally encumber the project funds. Typically the criteria to determine if a project will be incremental encumbered will be:

* **The Engineer’s Estimate at the time of advertisement is equal to or greater than $10 million.** To determine the Engineer’s Estimate amount, refer to the Form 65, line 7 Project Commitment Amount. This amount includes all Force Account items. Note that this threshold may change at the discretion of the PMO and OFMB.
* **The project’s construction duration is anticipated to span multiple fiscal years**. If the project has a landscape maintenance period, such time will not be used in calculating the construction duration.

If one or both of the criteria above are changed after bids are opened, the PMO and OFMB will determine if the project will be incrementally encumbered. It is important that the Project Engineer and contractor continue to communicate the status on the project expenditures compared to the encumbered amount throughout the life of the project.

**Process between Award and Pre-construction Conference:**

1. **Award:** The notice of the award letter will identify if the project will be incrementally encumbered. The Contractor is required to submit an initial payment schedule (drawdown schedule) within 15 days of award. When the payment schedule is submitted to the Project Engineer, review the payment schedule for signature from the contractor and immediately submit the payment schedule to the CDOT Awards officer. If it not signed, return the payment schedule to the contractor for signature. The contractor may also provide the payment schedule directly to the CDOT Awards Officer. The CDOT Awards Officer, will issue a contract for execution with the “Encumbrance Amount” for the current fiscal year in *Section 4. Price – Payment Terms* of the contract.
2. **Pre-construction Conference:** Per the Standard Special Provision Revision of Sections 108 and 109 (Multiple Construction Years), the contractor may submit a revised payment schedule (drawdown schedule) at the pre-construction conference. If the revised payment schedule changes the encumbrance amount by any amount for the current fiscal year, the Project Engineer will work with the Business Manager, the PMO and the Awards Officer to update the “Encumbrance Amount.” Once approved, the Project Engineer will update the “Encumbrance Amount” by following the Option Letter and Shopping Cart Process and update the drawdown data in SAP based on the contractor’s revised payment schedule within 10 days of the pre-construction conference or as soon as the encumbrance is updated in the Construction Project Contract (as per Construction Bulletin 2014-1).

**Payment Schedule Updates:**

As the project progresses, by the first day of the each month, the contractor is required to submit its payment schedule. It is important for the Project Engineer, contractor, PMO and OFMB to communicate where the project stands in regards to the “Encumbrance Amount.” The Project Engineer will review the payment schedule and monitor the contractor’s progress for an indication that they will exceed the encumbrance amount. If the contractor’s percent expended is approaching 75% of the encumbrance, the Project Engineer will carefully monitor the contractor’s progress. The Project Engineer should be proactive and start a discussion with the contractor, the region business office, PMO and OFMB.

1. If the contractor’s payment schedule for the current fiscal year total matches or is less than the “Encumbrance Amount” in the Purchase Order, the Project Engineer will update the drawdown schedule including the current month’s actual payments in SAP. (Construction Bulletin 2014-1).
2. If the current fiscal year total exceeds the “Encumbrance Amount” by any amount, the Project Engineer will determine whether the cause for the increase is related to the contractor completing work more quickly or if it is related to a differing site condition, change, or extra work. The Project Engineer will immediately contact the Resident Engineer and Program Engineer who will notify the Region PMO representative to work with the PMO and the OFMB. The Project Engineer will provide the anticipated amount of the increase and the related cause. The contractor cannot proceed with work that exceeds the encumbered amount. It is CDOT’s goal to never have a contractor stop work because encumbrance runs out; this is why it is important that the Project Engineer and contractor communicate with each other about the status of the project’s cash situation.
   * 1. If the increase is related to a differing site condition, change, or extra work, it may require a change order which may increase the Project Commitment amount. If it requires an additional encumbrance, it is important for the Project Engineer to discuss the change with the PMO and OFMB. The Project Engineer will need to evaluate the project budget to determine if a funding letter or Commission Action is needed. You would follow the option letter 1 (b) process and Commission action process. The Project Engineer will approve the payment schedule and update the drawdown schedule in SAP.
     2. If the increase is NOT related to a differing site condition, change, or extra work, the Project Engineer will coordinate with their Resident Engineer and Program Engineer who will discuss with the Region PMO representative and the PMO and OFMB to determine whether or not CDOT can accommodate the additional cash need during the current fiscal year.
3. Once the CDOT PMO and OFMB approve the increase to the “Encumbrance Amount”, the Project Engineer will initiate the Option Letter and Shopping Cart Process. After the option letter is approved, the Project Engineer will update the drawdown in SAP (as per Construction Bulletin 2014-1.)
4. While this is unlikely, if CDOT does not approve the increase to the “Encumbrance Amount”, the Project Engineer will, in a Form 105 Speed Memo, notify the contractor that anything greater than this amount will not be paid and that the contractor shall not exceed the approved “Encumbrance Amount.” The Project Engineer will need to clearly identify to the contractor a timeframe for response (five to seven calendar days should be adequate) and update the drawdown in SAP with actual payments but will not exceed the current approved fiscal year encumbered amount.

**Encumbering next fiscal year:**

When the contractor submits the April monthly Payment Schedule Update, the Project Engineer will use that amount to update the drawdown in SAP and notify the PMO and OFMB of the cash need for the next fiscal year. The contractor will certify by signing the Payment Schedule Update as the amount to encumber for the next fiscal year. The Option Letter and Shopping Cart process will be started in early April to ensure encumbrance before the end of the fiscal year.

**Option Letter and Shopping Cart Process:**

There are two provisions in the Option Letter process. The first, 1(a), is used to change the encumbrance amount for a fiscal year; and the second, 1(b), is used to change the Project Commitment amount and the encumbrance amount related to a change order. To change the encumbrance amount, the Project Engineer will verify if the Payment Schedule is signed by the contractor and the signature matches those listed in the contract. The contract includes a list of authorized people and an example of their signature. Refer to Exhibit F – Sample Payment Schedule for an example of the payment schedule. The Project Engineer will work with the Awards Officer to verify signatures. Once verified, the Project Engineer will create a shopping cart for the Awards Officer.

* Before Advertisement - Just before Ad the Project Manager will create a shopping cart with the first fiscal year’s expected encumbrance. The Project Manager will base that amount on the Engineer’s Estimate and the Spend-o-meter tool. The Project Engineer will email the Shopping Cart number to the Awards Officer by email. Once the Awards Officer receives the signed payment schedule from the contractor, the shopping cart will be adjusted to that amount.
* Encumbrance Adjustment at Preconstruction Conference or during Fiscal Year - If the contractor requests a change to the encumbrance amount, and once it is approved by PMO, RE and OFMB, the Project Engineer will create a shopping cart for the changed amount to the encumbrance amount based on the contractor’s certified Payment Schedule. The shopping cart number will be included in the project advertisement letter sent to the Contracts Distribution list (CDOT\_HQ\_CU-ConstructionContractsUnit@state.co.us).
* Next Fiscal Year - The Project Engineer will create a shopping cart in the amount of the following year’s encumbrance amount shown in the contractor’s April 1 signed Payment Schedule. Note that this additional encumbrance amount will be in effect on July 1 or when signed by the State Controller, whichever is later. Therefore if additional funds are needed for the current fiscal year, follow the steps for an Encumbrance Adjustment. The shopping cart number will be included in an email sent to the Awards Officer, Marci Gray (marci.gray@state.co.us).

The Shopping Cart will be used by the Awards officer to create the Option Letter and update the Purchase Order. It is expected that the option letter approval process will take about 12 days, with a 10-day period for the awards officer to gather OFMB approval. Once approved by the OFMB, the option letter is sent to the controller for review and signature. The turn-around time for the Controller is one business day. It is then returned to the CDOT Awards Officer for final approval of the Purchase Order in SAP. Once the Option Letter is complete and the Purchase Order is approved in SAP, the Awards Officer will send a copy of the option letter by email to the Project Engineer, Resident Engineer and the Contractor. The Project Engineer may use T-code ME23N to view the encumbered amount.

**References:**

Please print a copy of this bulletin and keep it with your copy of the *Construction Manual*.

The *Construction Manual* and Construction Bulletins can be found on the Design and Construction Project Support web page at:

<https://www.codot.gov/business/designsupport/bulletins_manuals>.