

MTO/ORBA CONTRACTS AND DOCUMENTS SUBCOMMITTEE MEETING NOTES

Date: October 5, 2023

Time: 1:00 to 4:00 pm

Location: Hybrid – ORBA Office (365 Brunel Road, Mississauga) or MS Teams Meeting.

ATTENDEE	ORGANIZATION	ATTENDEE	ORGANIZATION
Kyle McCutcheon (co-Chair)	McLean Taylor Construction	Kevin English (co-Chair)	MTO, Contract Management Office
Walid Abou-Hamde	ORBA	Rebecca Li	MTO, Contract Management Office
Simarpreet Kaur	ORBA	Joanna Long	MTO, Capital Planning & Program Office
Malcom Croskery	Pioneer Construction Inc.	Scott Reid	MTO, Construction Management Office
Alfredo Maggio	Graham Bros.	Karen Smith	MTO, Construction Management Office
Andrew Weltz	BAUER Foundations Canada Inc.	Christine Costa	MTO, Contract Claims
Anna Visconti	Powell (Richmond Hill) Contracting Limited	Ed Marcon	MTO, Contract Management Office
Ken McIntyre	R.W. Tomlinson Limited	Mireya Hidalgo	MTO, Contract Management Office
Kathryn Lack	Dufferin Construction Company	Tony Sangiuliano (guest)	MTO, Structures Office
Steve Gardonio	Facca Incorporated	Finlay Buchanan (guest)	MTO, Contract Management Office
Seve D'Orazio	Clearwater Structures	Adriano Cesarone (guest)	MTO, Contract Management Office
Walid Abou-Hamde	ORBA	Gizelle Cotton (guest)	MTO, Construction Management Office
Simarpreet Kaur	ORBA	Olu Olusanya (guest)	MTO, Highway Design Office
		Andrew DeSira (guest)	MTO, Structures Office

INTRODUCTION / ANNOUNCEMENTS

1. Introductions

- MTO and ORBA introduced new members to the subcommittee.
- Kevin English is the new subcommittee MTO co-chair.
- Mireya Hidalgo is the new subcommittee coordinator.
- Kyle McCutcheon is the new subcommittee ORBA co-chair.
- Walid Abou-Hamde and Simarpreet Kaur are the new ORBA staff members for this subcommittee.

2. Safety Talk

- ORBA delivered a safety talk on the use of Personal Protective Equipment (PPE) for bridge construction including fall protection / fall arrest systems, safety glasses, safety meetings, training, and working at heights.

3. Previous Meeting Notes

- Review of previous (February 28, 2023) meeting Minutes:
 - a) General
 - ORBA in agreement with the use of the new meeting notes template.
 - ORBA will be provided 3 weeks to review meeting notes sent by MTO.
 - Final meeting notes and supporting documents shared for the meeting will then be posted to the MTO Technical Consultation Portal.
 - **Action:** Closed.
 - b) SSP for Future Pandemic / Epidemic
 - The NSSP for Public Health Emergency (pandemic contract language) was issued and implemented in MTO's Contract Preparation System (CPS) on July 31, 2023, as NSSP CONS0003. This NSSP was converted to SSP 199S05 as of September 2023 for all MTO contracts. No additional comments from ORBA.
 - **Action:** Closed.
 - c) SSP 199F45 – Seasonal Shutdown
 - MTO responded to ORBA by e-mail on March 23, 2023.
 - The e-mail response highlighted the following:
 - MTO will continue to consider individual requests to suspend the collection of Liquidated Damages, however, to drive improved consistency, each request will require Area Manager approval in consultation with the MTO Head, Construction.
 - MTO will review and make improvements to SSP 199S45 and applicable designer guidance to add allowable operations more consistently and to include work in contracts that can be performed during a typical seasonal shutdown period (e.g. work that does not affect the opened roadway).
 - **Action:** Closed.
 - d) MTO General Conditions of Contract review update
 - MTO is continuing the Phase 2 review of the General Conditions. MTO did not receive list of priority items from ORBA to address this Phase 2 review. However, comments have been received on numerous topics. MTO will come to ORBA for further consultation on specific proposed changes throughout the review process.
 - **Action:** This item will be closed until further updates are available.
 - e) Bonding requirements
 - No feedback was received from ORBA.
 - **Action:** Closed.

3. Previous Meeting Notes (continued)

- f) Obtention of digital design files
 - MTO is working on updating SSP 199S65: Contract Documents and Native Format Electronic Information.
 - MTO is reviewing preliminary feedback from consulting engineers of Ontario and will work with ORBA and ACEC as part of its review.
 - MTO inquired with ORBA during the meeting how native format electronic files currently would be used by contractors.
 - In response to MTO’s inquiry, ORBA explained that this information would be beneficial when using GPS survey equipment but proposed to provide a comprehensive list by the next subcommittee meeting.
 - **Action:** ORBA to provide a list of how native format electronic files would be used by contractors.

- g) Contractor hard copy submissions
 - ORBA noted that this item was raised due to the use of Contract Management System.
 - MTO is reviewing this as part of the Phase 2 review of the General Conditions and will provide an update once a recommendation is available.
 - **Action:** Closed until update is available.

- h) AFADs and consistency of usage
 - ORBA explained that this is still an issue.
 - MTO asked if ORBA can provide specific example(s) of when AFADs where not allowed to be used on MTO contracts.
 - MTO’s subject matter expert was not available to attend this meeting. Item will be kept open and deferred for next meeting.
 - **Action:** ORBA to provide specific example(s) of when AFADs where not allowed to be used on MTO contracts by next meeting.

OPEN ITEMS		ACTION BY
January-2021-01	<p>DESIGNATED SOURCES FOR MATERIALS (DSM)</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> • This item is to provide DSM updates. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> • No new updates. <p>Action – Closed until further update is available.</p>	N/A

<p>April-2021-02</p>	<p>SUPPLY CHAIN DELAYS AND IMPACTS ON SCHEDULES</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> ORBA raised concerns regarding guaranteed-pricing issues with materials and challenges focused on imminent supply issues for a range of materials. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> ORBA noted that although there are no longer issues regarding the availability of cement products, there are challenges when working with concrete suppliers for the purposes of bidding on MTO contracts resulting in cost escalations. ORBA believes that this perceived additional added risk by suppliers appears to be due to MTO’s Rapid Chloride Permeability (RCP) acceptance requirements for concrete products. MTO explained that the technical discussion regarding RCP acceptance requirements is more appropriate for the MTO-ORBA Structures Subcommittee which also includes representation from the MTO Contract Management Office (including co-chair). Will review Value for Money considerations. ORBA also shared feedback from ready mix suppliers around timing restrictions and asked if MTO would consider increasing permitted lane closure windows to help attract more interest from concrete suppliers. For example: sofit forming pump. If there is only 5 hours to place concrete, there is a lot of risk for concrete suppliers. This is deterring them from supplying concrete for MTO contracts. <ul style="list-style-type: none"> MTO explained that the challenge is that the decision on lane closure durations is site-specific but agreed to seek additional internal feedback and investigate further. ORBA asked for MTO to investigate supply issues for MTO electrical work. Situation explained was for control cabinets item (to control lighting, etc.) required in a contract but no details are given resulting in the contractor needing to complete the design and potential supply challenges of specific components. <ul style="list-style-type: none"> MTO asked for ORBA to provide specific example to help MTO review this concern further. 	<p>ORBA/ MTO</p>
-----------------------------	---	-----------------------------

OPEN ITEMS	ACTION BY
<p>Actions: ORBA – 1. ORBA to raise technical concern at MTO-ORBA Structures Subcommittee. 2. ORBA to provide specific examples regarding electrical supply issues for MTO contracts.</p> <p>Action: MTO – MTO to provide feedback to the traffic office for consideration for additional lane closure durations.</p>	
<p>CONTRACT MANAGEMENT SYSTEM (CMS) UPDATE</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> • MTO launched its new Contract Management System live in February 2023. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> • MTO presented updates to ORBA. These are available in the power point presentation shared as a supporting document for this meeting. • ORBA indicated that there are still concerns with invoicing and processing payments, and additional administrative staff hours to use CMS. • MTO noted that they are prioritizing fixing payment issues. Goal is not to delay payments. Contractors should work with their MTO contract representatives for resolution of any contract specific issues. • ORBA asked if MTO was open to a specific CMS MTO-ORBA subcommittee to address outstanding issues. • MTO suggested that instead of a separate subcommittee, MTO to invite ORBA to participate in a “lessons learned” workshop in the new year. • Keep item open to provide future system updates. <p>Action – MTO to reach out to CMS stakeholders, including ORBA, over winter to discuss lessons learned.</p>	<p>MTO</p>

NEW ITEMS		ACTION BY
<p>October-2023-01</p>	<p>DEWATERING REVIEW UPDATE</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> MTO has been working on a review of its dewatering policies and practices. The objective of this review was to upgrade the state of practice in the design, installation, operation, and removal of dewatering and temporary flow management systems. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> The detailed recommendations following the Dewatering review are available in the presentation shared as a supporting document to this meeting. MTO is now ready to publish its new specification changes in the Technical Consultation Portal (TCP) for comments (for OPSS.PROV 902 and 517). No comments or concerns from ORBA were shared at this meeting. <p>Action – ORBA can provide comments as part of TCP process. Close item.</p>	<p>N/A</p>
<p>October-2023-02</p>	<p>HEALTH AND SAFETY ACCREDITATION PROGRAM</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> MTO is looking for feedback from ORBA with their thoughts on MTO requiring contractors to be accredited under a health and safety program such as ISO 45001:2018, CSA Z45001-19, BS OHSAS 18001, or IHSA Certificate of Recognition (COR™) 2020 as part of MTO’s prequalification requirements to bid on MTO contracts. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> ORBA to canvass its members and its Health and Safety committee to provide a response to MTO for next meeting. <p>Action – ORBA to provide a response for next meeting.</p>	<p>ORBA</p>

NEW ITEMS		ACTION BY
<p>October-2023-03</p>	<p>UPDATE TO OPSS.PROV 102 (WEIGHING OF MATERIALS)</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> • MTO is working on updating OPSS.PROV 102. • The changes will be posted in the TCP for comments. • The main goal of this update is to bring the specification up to date based on the Weights and Measures Act and Regulations. • MTO is working with Measurements Canada to revise and update OPSS.PROV 102. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> • MTO provided an overview of proposed changes including: <ul style="list-style-type: none"> - Rolling in SSP 101S18 (Bar Coding on Material Delivery Invoices). - Additions and revisions of definitions. - Review of the Design and Submissions requirements. - Removal of Conveyor Scale requirements. - Updating the QA requirements. • MTO asked if ORBA had any concerns or issues with the update of OPSS.PROV 102 to share with MTO at this time. <ul style="list-style-type: none"> - No concerns or issues were shared by ORBA during the meeting. • MTO asked if ORBA had any concerns if MTO only included requirements for Non-Automatic Weigh Scales for the purpose of Limits of Error as part of the OPSS.PROV 102 update. <ul style="list-style-type: none"> - ORBA will confirm a response with its members. - Until ORBA confirms a response, MTO will proceed with the OPSS.PROV 102 revisions assuming only Non-Automatic Weigh Scales are required. <p>Action – ORBA to confirm a response regarding only including requirements for Non-Automatic Weigh Scales for the purposes of Limits of Error.</p>	<p>ORBA</p>

NEW ITEMS		ACTION BY
<p>October-2023-04</p>	<p>UPDATE TO SSP 199S66 (QUALITY CONFORMANCE REQUIREMENTS)</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> MTO is working on updating SSP 199S66. This Special Provision describes the process for the assessment of conformance to the quality requirements and the administrative actions for non-conformance. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> MTO explained that the main goal of the SSP 199S66 update is to clarify the assessment of conformance to the quality requirements. Some changes include: <ul style="list-style-type: none"> Review of scope to include 199S53 requirements that had been previously removed regarding access to records (this was moved to GCs but not consistently understood and followed). Clarification of timelines. Separating NCR submission in 2 parts (identification of non-conformance and addressing non-conformance). New definitions for preventive measures and corrective actions. Clarifying structure of SSP and making the use and understanding of the SSP simpler. ORBA shared concern that it believes that MTO is taking an improper approach by automatically assessing deviations with every non-conformance. <ul style="list-style-type: none"> MTO believes that some of the proposed changes in the SSP 199S66 should clarify the quality requirements process. MTO explained that if the Non-Conformance process is followed for Categories 1 through 4 of Table 1, as part of the assessment of deviation process in section 3.4.2, a deviation can still be issued (based on c, d, and/or e in section 3.4.2). MTO explained that the assessment of the deviation is independent of an agreed-upon corrective action. ORBA will canvass their members for specific examples to share with MTO of situations where a deviation was issued without following Section 3.4.2, Assessing a Deviation. <p>Action – ORBA to confirm examples.</p>	<p>ORBA</p>

NEW ITEMS		ACTION BY
<p>October-2023-05</p>	<p>ENGINEERING MATERIALS TESTING COMPANIES</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> ORBA raised concerns about engineering firms bidding for technical services to the contracting industry, during the tendering period of a contract, with the uncertainty of not finding out if their company will get the Quality Assurance assignment work. ORBA is requesting that in areas where the work is not related, engineering firms be permitted to work for both the contractor and MTO. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> It is the responsibility of engineering firms such as QA labs to identify a conflict, for MTO’s review, on a contract-by-contract basis as soon as possible by using the Conflict-of-Interest form available in the QA labs’ contract with MTO. MTO aims to inform contractors as soon as possible (typically by pre-start meeting) of the name of the QA lab firm to be used on a contract. ORBA concerned by the fact that due to amalgamation of engineering firms, there are not a lot of companies remaining available to provide services for contractors if already providing QA services for MTO on a contract. MTO considers it to be a conflict of interest when an engineering firm, providing QA services on a contract, with MTO also provides any QC services for the contractor on the same contract. MTO will review internally if QA labs can be identified during the tendering of a contract. <p>Action – MTO to review posting of QA labs during tendering.</p>	<p>MTO</p>

NEW ITEMS		ACTION BY
<p>October-2023-06</p>	<p>CONTRACTOR’S INFRACTION REPORT PROCEDURES AND FORMS</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> MTO posted the final Procedures for Processing the Contractor’s Infraction Report and related forms in MTO’s Technical Publications site as of July 2023 following TCP for consultation (TCP No. 0153). <p><i>Discussion:</i></p> <ul style="list-style-type: none"> MTO noted that the new procedures and related forms are active and available in MTO’s Technical Publications site and recommended for all contractors to be familiar with the procedures and forms. MTO also noted that the latest Qualification Committee Procedures is the January 2022 version and is also available in MTO’s Technical Publications site. <p>Action – Closed.</p>	<p>N/A</p>

NEW ITEMS		ACTION BY
<p>June 2022-07</p>	<p>MATERIAL FUEL INDICES</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> • ORBA indicated that they would like to discuss implementing new indexing for materials such as steel. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> • ORBA inquired on the status of the new SSP for Steel Price Index. <ul style="list-style-type: none"> - MTO noted that SSP 199F67 (Payment Adjustment for Changes in the Steel Price Index), has been available for use in CPS since July 2023. - MTO to send published SSP 199F67 to ORBA. - MTO will continue monitoring the implementation and administration of this SSP for any further lessons learned and improvements when necessary. • ORBA inquired on the status update for the fuel consumption rates for caisson piles and asked if MTO was open to work with assigned subject-matter representatives from ORBA. <ul style="list-style-type: none"> - MTO is open to work with ORBA representatives and will follow-up MTO's Contract Award section. <p>Actions – 1. MTO to send final SSP 199F67 (as available in CPS and MTO Technical Publications). 2. MTO to confirm next steps for fuel consumption rates for caisson piles.</p>	<p>MTO</p>

NEW ITEMS		ACTION BY
October 2023-08	<p>INTERPRETATION FOR ACCESS AND EGRESS IN SITES</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> ORBA asked for clarification regarding traffic restrictions for Sunday work and interpretation in contract, where there may be conflicts in a contract between operational constraints and traffic control requirements (SSP 199F01). <p><i>Discussion:</i></p> <ul style="list-style-type: none"> ORBA explained that this is an issue for remote areas (specially for northern Ontario). MTO will follow-up internally. MTO suggested for contractors to mention project-specific issues and work proactively with the contract's MTO Area Manager, Construction and Contract Services Administrator. <p>Action – MTO will review.</p>	MTO

NEW ITEMS		ACTION BY
<p>June 2022-09</p>	<p>EXCESS SOIL MANAGEMENT</p> <p><i>Description:</i></p> <ul style="list-style-type: none"> In December 2019, Ontario made a regulation under the Environmental Protection Act, titled "On-Site and Excess Soil Management" to support improved management of excess construction soil. This new regulation resulted in changes to MTO contract requirements. <p><i>Discussion:</i></p> <ul style="list-style-type: none"> Following a survey ORBA conducted of its members, ORBA is sharing concern that members do not understand what the regulation is and what the owner is supposed to do from testing and providing disposable sites ahead. When testing is not completed before construction, disposal costs are excessive, and the contractors are told to leave the material on MTO's Right of Way. This is concerning for ORBA and ORBA is recommending more testing be conducted during the design phase and proactively figure out the disposal sites. <ul style="list-style-type: none"> MTO welcomes ORBA feedback and explained that we are also encouraging additional testing be conducted during design. Due to the transition of the implementation of the regulation and continuous learning curve, it is anticipated contractors will see improvements on future contracts. <p>Action – Closed.</p>	<p>N/A</p>

INFORMATION SHARED FOR THIS MEETING		
Document Title	Shared By	Format
Dewatering Committee Presentation – October 5 2023	MTO	pdf
CMS update – October 5 2023	MTO	pdf

NEXT MEETING
<ul style="list-style-type: none"> The next meeting will be hybrid, and on Tuesday, March 26th, 2024, at 10AM to 1PM. It will be ORBA's turn to chair the next meeting.