

MEETING NOTES

MTO/ORBA Contracts and Documents Subcommittee

DATE	December 3, 2024
TIME	10:00 – 11:30 AM
MEETING HOSTED BY	MTO
LOCATION	Microsoft Teams

Attendance:

ATTENDEE	ORGANIZATION
Jenn Meleschuk (co-Chair)	MTO, Contract Management Office
Kyle McCutcheon (co-Chair)	McLean Taylor Construction Ltd.
Steven Crombie	ORBA
Simarpreet Kaur	ORBA
Mireya Hidalgo	MTO, Contract Management Office
Ed Marcon	MTO, Contract Management Office
Jamie Lauzon	MTO, Contract Management Office
Aimee-Rose Tupaz	MTO, Contract Management Office
Adriano Cesarone	MTO, Contract Management Office
Ahmed Ouda	MTO, Contract Management Office
Mamduh Obeidat	MTO, Contract Management Office
Redwan Chowdhury	MTO, Contract Management Office
Frank Lucente	MTO, Construction and Audit Services
Kevin English	MTO, Major Projects Delivery Office
Scott Reid	MTO, Construction West
Tyler McQuaker	MTO, Construction Northwest
Joanna Long	MTO, Capital Planning and Programming Office
Mike Pearsall	MTO, Highway Design Office
Livia Andrade	Ministry of Public and Business Service Delivery and Procurement (MPBSDP), Risk and Insurance
Andrea Bulanda	MTO, Environmental Policy Office
Steven D'Orazio	Clearwater Structures Inc.
Malcolm Croskery	Pioneer Construction
Tim Booth	Bauer Foundations
Kathryn Lack	CRH Americas Materials
Afra Shokraei	Black and MacDonald
Steve Gardonio	Facca Construction

Alfredo Maggio	Graham Bros. Construction Ltd.
Anna Visconti	RSG International

Introduction / Announcements

- Jenn Meleschuk has joined the subcommittee and is now the co-chair from MTO.
- Aimee-Rose Tupaz has joined the subcommittee and is now the co-ordinator.
- Kevin English and Tyler McQuaker have joined the subcommittee.

Safety Talk

- MTO gave a safety talk on slips, trips, and falls.

Previous Meeting Notes

a) MTO General Conditions

Advance Payment, Abnormal Weather, Critical Path Schedule

- MTO sent draft GC language on November 4, 2024 to ORBA regarding Advance Payment, Abnormal Weather, Critical Path Schedule, and a proposed New PH-CC Form for preliminary comments from ORBA members (prior to posting in the Technical Consultation Portal (TCP)).
- MTO only received comments from Dufferin, as of the date of the meeting, and is currently reviewing their comments.
- MTO gave ORBA members an additional two weeks, to December 17, 2024, to submit their comments prior to TCP consultation process.
- ORBA members will still have an opportunity to comment on the MTO General Conditions when it is posted on the TCP in early 2025.

Fuel Price Calculation clarification

- MTO is looking to clarify the description of the variable used for the fuel price calculation, Bc. Bc is currently described as the “fuel price index in the month that the Contract was advertised for tender”. MTO is proposing to change this to “the fuel price index in the month prior to tender opening. The purpose of this change is to help with administrative consistency.
- This change will be reflected as a change in the MTO GCs which will be available for comments as part of the TCP process.

Amendment to Ontario Construction Act

- MTO is aware of the proposed amendment to the Ontario Construction Act.
- MTO is reviewing the amendments and what are the impacts to the MTO General Conditions.
- ORBA identified clause GC 8.02.04.06.04 to be reviewed regarding the release of the annual holdback.

Action: ORBA to provide comments on draft language on Advance Payment, Abnormal Weather, and Critical Path Schedule by December 17, 2024.

b) Obtention of Digital Files

- MTO and ACEC-ON has a working group on digital files.
- A survey was prepared by ACEC to distribute to ORBA members.
- The intention of survey is to understand how contractors use digital files and what concerns do they have.
- MTO indicated they had not seen any results from the survey.

Action: ORBA to follow up on collecting survey results.

c) Material Fuel Consumption Rates

- MTO met with ORBA on September 11th to discuss fuel consumption rates for caissons.
- ORBA proposed 3 fuel consumption rates – earth, soft rock, and hard rock.
- After reviewing ORBA's proposal, MTO agreed to two fuel consumption rates for caissons – one for earth and one for rock.
- Issue is that the unit of measure for caissons when bidding is per m however, the consumption rates provided were in L/m³ as it considers the diameter of the caisson.
- MTO is working on the numbers to incorporate the diameter of the caisson.
- ORBA asked for an approximate timeline as to when this will be implemented.
- MTO stated that a Special Provision would need to be prepared and then posted on TCP for 30 days. Depending on the number of comments, may take up to an additional 30 days before it can be implemented in CPS.
- The goal is to have it in contracts for the 2025 construction season.

Action: MTO working on a calculation to address the diameter of caisson for the two fuel consumption rates.

d) Annual OPSS 127 Consultation Schedule

- MTO provided the consultation schedule at the June meeting.
- MTO is changing publication date of OPSS 127 to July to have almost all the variables included.
- MTO has 1/3 of the equipment list ready and will be circulated to ORBA for January and will be posted to TCP at the same time.
- July 2025 publication of OPSS 127 rates is using the same methodology developed in 2021.
- ORBA had no concerns with the change in publication date to July.

Action: Closed

Standing Items

APRIL 2021-02, SUPPLY CHAIN DELAYS AND IMPACTS ON SCHEDULE

Description:

- Open item to have pro-active discussions regarding supply issues for a range of materials.

Discussion:

- ORBA mentioned in June that there are delays with electrical traffic equipment however nothing new was raised.
- Item to be closed now and reopened should there be any issues in the future.

Action: Closed

OCTOBER 2022-01, CONTRACT MANAGEMENT SYSTEM (CMS) UPDATE

Description:

- MTO launched its new Contract Management System live in February 2023.

Discussion:

- MTO continues to work on enhancements and stabilization of CMS.
- In the Fall, MTO completed a CMS change request regarding:
 - CA functionality
 - Improvements to change management processes and workflow.
 - CA appraisals
 - File manager structure
 - Update roster roles based on contract type.
 - modification of contractor estimate input in compensation request and change proposal applications
 - Update of Delegation of Authority
 - Addition of 0% installed weight to material weigh tickets application
 - Implementation of a zero-dollar change order workflow in compensation request, change initiation, and change order.
 - Updates to Indigenous procurement reporting application.
 - Changes to time management and key contract dates during life of the contract. Contract time for different applications within CMS. It will automatically update the dates and includes warranty dates.
 - Improvements to fuel price index reporting to look at all the different indices.
- Any changes to members on the project roster for the Contractor, let the CA and CSA know for it to be updated.
- Data migrated from WBCMS to CMS, information was fragmented and hard to get to the detailed records.
- All the records from WBCMS will be migrated to the file manager in CMS. It will be in a folder in pdf format.

- A CMS user feedback survey came back in October and preliminary results indicate that there is still work to do to improve CMS and user buy-in.
- MTO is tabulating those results to be use it in the winter focus groups and reach out to members who were on that focus group from ORBA last year.
- MTO will reach out to ORBA to see if there was anyone else who would like to participate.
- MTO is looking at OPAs being pulled into the invoice and is working on a solution.
- At MTO-ORBA Executive Committee, MTO is encouraging ORBA to complete the CMS survey to get feedback on CMS.

Action: MTO to resend the CMS survey to ORBA for circulation to members to complete.

New Items

DECEMBER 2024-01, INSURANCE REQUIREMENTS

Description:

- To align the commercial general liability for products and completed operations aggregate with the limit per occurrence.

Discussion:

- Currently in the MTO General Conditions, it is \$2M for products and completed operations aggregate and \$5M per occurrence for commercial general liability.
- MPBSDP stated that the insurance industry norm is to have the limit of the commercial general liability for products and completed operations aggregate match the limit per occurrence.
- The \$5M limit for products and completed operations aggregate is consistent for all other contracts within the Ontario Public Service (OPS).
- MPBSDP recommended increasing the limit from \$2M to \$5M for products and completed operations aggregate to match the per occurrence limit.
- Some ORBA members had not seen the \$5M for products and the completed operations aggregate and \$5M per occurrence and if it would increase premiums.
- MPBSDP said that they have been seeing a limit for products and completed operations aggregate that matches the per occurrence limit and did not expect it to increase premiums.
- The MTO General Conditions has the products and completed operations aggregate at a lower limit than the per occurrence which is unusual from MPBSDP's experience as it should match.

Action: MTO to update the General Conditions for the limit for products and completed operations aggregate to matches the per occurrence limit for commercial general liability insurance.

DECEMBER 2024-02, CONTRACTOR PERFORMANCE RATING PILOT UPDATE

Description:

- MTO provided an update on the Contractor Performance Rating (CPR) Pilot.

Discussion:

- MTO and ORBA worked on a new CPR workbook that was piloted from 2017 to Spring 2024.
- MTO provided ORBA with the results of the analysis comparing the CPR pilot to the current CPR.
- The CPR pilot score average was higher than that of the current CPR score average.
- The CPR pilot had Environmental, Contract Execution, Traffic & Safety, and Timeliness categories start with the maximum number of points.
- MTO is recommending continuing with implementing a new CPR based on the CPR pilot and phasing out the current CPR.
- ORBA did not understand why the current CPR has the Environmental, Contract Execution, Traffic & Safety, and Timeliness categories start at two out of four and it was good that the CPR pilot addressed it.
- ORBA did not have concerns with MTO moving ahead with the CPR pilot.
- The presentation shared with the subcommittee has been appended to the meeting notes.

ACTION: Closed

DECEMBER 2024-03, EXCESS SOIL UPDATE

Description:

- MTO is developing an interim Environmental Guide for Earth Management Best Practices with respect to *O. Reg 406/19 On-Site and Excess Soil Management*.

Discussion:

- MTO is working on Best Management Practices guide for the management of earth generated on MTO projects including excess soil.
- Challenges on developing the guide due to the ongoing amendments to the regulation.
- ORBA identified challenges from excess soil and not having the Soil Characterization Report (SCR) and Assessment of Past Uses (APU) during tendering which is critical for bidding.
- MTO projects are exempt from the planning requirements of the regulation for fit state of repair, movement from one MTO project to another, and emergency situations.

- MTO is working on updating NSSP ENVR0014 regarding what documents need to be submitted.
- The projects referenced by ORBA may not be exempt from the planning requirements of the regulation and generated excess soil. ORBA to verify.
- There were transition issues with the timing of the regulation and projects going to tender as testing had not been done and an assumption was put into the NSSP.
- MTO asked ORBA to provide a list of projects where this documentation was not provided during tender phase to help improve.
- ORBA asked if MTO was going to add a line item of what table to use in the Q sheets or add a disposal line item.
- The current NSSP ENVR0014 has information identifying the excess soil quality standard table.
- The presentation shared with the subcommittee has been appended to the meeting notes.

Action: ORBA to provide MTO with the list of projects that did not provide an SCR and APU.

ROUNDTABLE

- Construction Bonds: ORBA raised an issue regarding bonds to MTO-ORBA Executive Committee.
 - The SP covers 50% of the tender price for the bond. When the value increases, policy for the surety to audit the job and charge more for the bond at the end of the job. If the job was less, would receive a credit.
 - MTO feedback was that MTO did not ask for the increase on bonds.
 - It is out of the Contractor's hands – surety's policy as the scope of the work has increased there is an increase for exposure to the Contractor and the value of the bond increases.
 - MTO asked if the surety takes into consideration that a significant amount of payment is received for the work by the end, so exposure is limited.
 - ORBA stated that it does not because it is the extension and drawing the surety along with that size of bond.
 - Action: MTO to add item for next meeting.
- Claims/Adjudication Tracker: ORBA mentioned there was a claims/adjudication tracker in the past and wanted to know if it would be continued.
 - Action: MTO to confirm.
- Asphalt thickness measurement: ORBA raised an issue regarding tonnage vs m² for unit of measure and if tonnage could be considered more often than m² due to the varying tolerance for asphalt thickness specifically on milled surfaces.
 - ORBA asked if MTO could provide a response on why it cannot be tonnage for asphalt thickness.
 - Action: MTO to take it back.

Information Shared for this Meeting

DOCUMENT TITLE	SHARED BY	FORMAT
Contractor Performance Rating (CPR) Pilot Update	MTO	PDF
Excess Soil BMP Presentation to ORBA	MTO	PDF

Next Meeting

- Tuesday, February 25, 2025 – ORBA to chair.