E1.0 SPECIAL PROVISIONS

1.0.1 Reference Documents

The following documents are referenced in this chapter and can be found at the location specified.

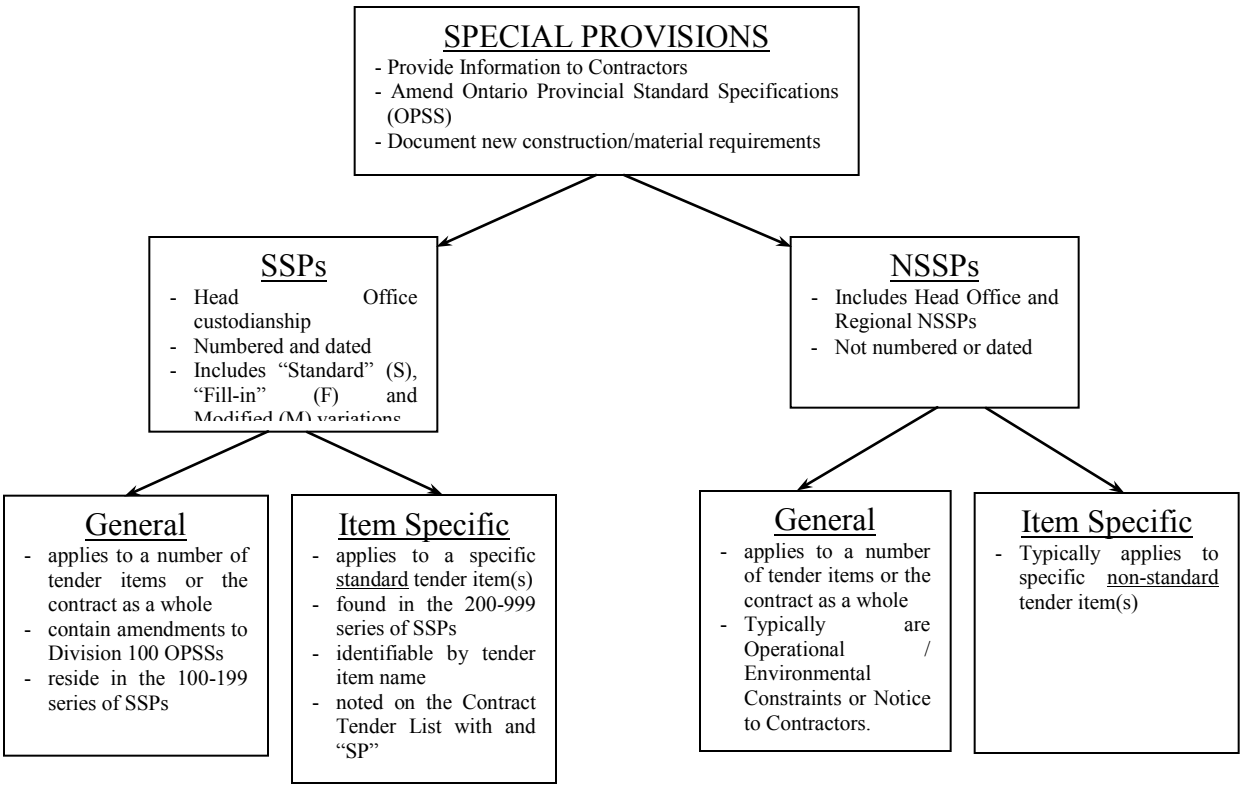
Document Title	Location of Document
OPSS.PROV 100, MTO General Conditions of Contract	CPS - OPSS 0100
Directive QST-C-13 - Implementation of Revisions to Standards, Procedures and Policies that Affect the Preparation of the Capital Construction Contract Package	CPS - Directives Q-C013
Highway Design Bulletin 2008-003 - Management of New: Non-Standard Tender Items, Non-Standard Special Provisions and Modified Standard Special Provisions	CPS News - Item 08-14

1.1 GENERAL

The term "Special Provision (SP)" as defined by the MTO General Conditions of Contract means "***special directions within the Contract Documents containing requirements particular to the Work***". Special provisions typically cover requirements in the contract that are not covered by standard specifications. They form a part of the Contract Documents and as such are considered legal documents.

In preparation of the contract documents, the designer considers SPs from two types, Standard Special Provisions (SSPs) and Non-standard Special Provisions (NSSPs). Standard special provisions and NSSPs are further categorized into "General" and "Item-specific" SPs.

The diagram on the following page illustrates the relationship between the different types of special provisions and highlights some of their differences.



1.1.1 How SPs Fit within the Contract Documents

Special provisions fit within a contract according to the order of precedence specified in OPSS.PROV 100, General Conditions of Contract. All SPs within a contract carry equal weight. If a conflict occurs between different SPs within a contract, the following condition taken from the General Conditions applies: "***Later dates shall govern within each of the above categories of documents.***"

1.1.2 Implementation of Special Provisions

The implementation of SSPs for use in Ministry construction contracts is governed by Directive QST-C-13 and is the responsibility of the Design and Contract Standards Office (DCSO), Highway Standards Branch. Prior to implementation, DCSO performs and coordinates reviews of all SSPs submitted for implementation to promote compliance with MTO policies/procedures and ensure consistency by setting the style, format and typical wording. DCSO is also responsible for assigning numbers to SSPs.

The implementation of NSSPs for use in Ministry construction contracts is primarily the responsibility of the NSSP developer. Non-standard special provisions are inserted into contracts by the designer in consultation with the regional Contract Review Officer.

1.2 FUNCTIONS OF A SPECIAL PROVISION

Most work projects contain requirements not covered in the Ontario Provincial Standard Specifications. To cover these situations, SPs may be inserted in the contract. When OPS specifications are updated, SSPs are reviewed for incorporation in the applicable specification as appropriate. The functions of SPs can be divided into the following areas:

a) Provide Information to Contractors (Notice to Contractor/Operational Constraints)

A "Notice to Contractor" (NC) provides information directly to the contractor and typically does not influence costs. Caution should be exercised to ensure that the contractor is not directed to perform any work through an NC. Notice to Contractor SPs should not be used to convey information necessary for bidders to prepare their tender submission. This type of information should be inserted in the "Instructions to Bidders" in consultation with the Contract Tendering Section, Contract Management and Operations Branch.

An Operational Constraint (OC) is used where constraints have to be placed on the Contractor, for example, in areas of high traffic volume, environmental sensitivity or dense population.

An OC is not item-specific and does not require a payment statement. An OC affects the work in general (e.g. timing, duration, start/end dates, methods allowed/not allowed) and may cause the contractor to incur additional costs on a number of tender items. Costs resulting from these constraints are generally not applicable to any one tender item and are accounted for as per the MTO General Conditions of Contract.

Since OCs may increase the cost of a contract, their impact on the contract should be carefully reviewed. Caution should be exercised to ensure that the contractor is not directed to perform any work through an OC.

b) Amend Standard Specifications

The most common function of SPs is to amend standard specifications. Amendments to standard specifications can be item specific or general in nature and can only be applied to standard specifications that are currently 'active' in CPS and applicable to the contract.

The following are types of amendments often required in the contract:

- To "extend" a specification to include additional work or requirements. For example, adding the work of adjusting a catch basin to the SUPERPAVE item when only one adjustment is required in a long paving project. A separate tender item for such a small amount of work could result in high bids.

- To delete a standard specification requirement. If work is to be deleted from the "Construction" Section of a specification, it may also be necessary to delete any reference to that work in the "Basis of Payment" section.

- To alter standard specification construction requirements.

- To alter material requirements. The standard materials required for a given type of work may not be adequate in a specific area.

c) New Construction Requirements.

Special provisions are also used to document the use of new construction / material requirements not covered by standard specifications.

Stand alone SPs or SPs amending Standard Specifications should:

i) Provide the Contractor with a definite basis for preparing a bid.

ii) Inform all representatives of the Owner of the work the Contractor is obligated to do, without providing directions to the Owner's representatives. Owners typically provide directions to their own staff by other means (e.g. Contract Administration Agreement).

iii) Describe equipment and contractual procedures.

iv) State the basis for acceptance or rejection of the completed work, including sampling and testing methods.

v) When applicable, provide rules for decisions on matters referred to the Contract Administrator.

1.3 TYPES OF SPECIAL PROVISIONS

1.3.1 STANDARD SPECIAL PROVISIONS (SSPs)

All SSPs are prepared by Provincial Functional Offices (PFO's) and are written to be used consistently throughout the province on all construction contracts according to their warrants. "WARRANTS" and "NOTES TO DESIGNERS" (when needed) are only found at the bottom of SSPs stored in CPS and are automatically removed when the contract package is generated. All SSP warrants must be followed by designers unless otherwise authorized by written permission from the applicable PFO.

Upon completion, SSPs are submitted to the Design and Contract Standards Office (DCSO) for implementation in CPS, electronic publishing on the Ministry's website and hardcopy publishing in section E3.0 of this chapter. Provincial Functional Offices are responsible for the technical content of all SSPs.

All SSPs are referenced by a six-character number found it its title block. Three digits are followed by an 'S' or 'F', followed by 2 more digits which are used to identify the individual SSP. Under special circumstances an 'M' maybe found after the last 2 digits. The following briefly describes 3

variations of SSPs identified by the alpha-character found in its code. Standard special provisions characterized as general or item specific may comprise of all 3 variations.

a) SSPs with an 'S' - Standard SSPs

An SSP with an 'S' in its code indicates that it is complete as written and no additional information needs to be added. The text of these SSPs is not included in the contract documents however the codes of all applicable SSPs to the contract are listed in section D & F of the Schedule of Provisions, Contract Plans, Standard Drawings, Specifications and General Conditions.

b) SSPs with an 'F' - Fill-in SSPs

An SSP designated with and 'F' in its code is commonly called a "fill-in" SP. This is an SSP that requires project-specific information to be added by the designer. "NOTES TO DESIGNER" found at the end of the SSP describes the information required and/or the criteria to be used when inserting text and/or optional clauses. The main body, intent and warrant of a fill-in SSP does not change, only the project-specific information. All fill-in SSPs must be included with the submission of the contract package.

c) SSPs with an 'M' - Modified SSPs

As a general rule modification of SSPs is discouraged but when ***minor*** variations are required for an SSP to meet project-specific needs, an SSP may be modified. Modified SSPs are identified in Contracts with the letter "M" (and a version date for tracking purposes in brackets if desired) at the end of the six-character SSP number. The active version date of the SSP that is modified is to remain unchanged in the title block. An SSP designated with an 'M' in its code is commonly called a "modified" SP.

Modifications may be applied to both standard and fill-in SSPs. Like fill-in SSPs, the full text of a modified SSP is required to be included with the submission of the Contract package.

Modified SSPs are subject to applicable requirements of NSSPs, including compliance with Highway Design Bulletin 2008-003. Frequently used modified SSPs are stored in CPS within the regional NSSP directories however they must be inserted in contracts as a modified SSP and not an NSSP.

The following table summarizes the number coding for SSPs:

SSP Series	Example	Function of SSP
100	100F02	Amends MTO General Conditions of Contract
101	101S18	Amends all other "100 Series" standard specifications.
102 - 109	103S52	Contain general amendment(s) to OPS construction specifications in the 200 to 900 series. The third digit of this coding corresponds to the first digit of the applicable construction specification number.
110 to 125	111S09	Contain general amendment(s) to OPS material specifications in the 1000 to 2500 series. The second and third digits of the code correspond to the first two digits of the applicable material specification number.
168	168F10	Specify general contract requirements for Electrical / Advanced Traffic Management Systems (ATMS) functions
199	199S48	Specify general contract requirements not covered in any standard specification.
200 - 900	543S05	Amend the related OPS construction specifications as determined by the first 3 digits of the code and are specific to an item or group of items. When the 2nd and 3rd numerical digits are '99', the SSP does not amend an OPS construction specification (because one does not exist) and therefore in effect acts as one as a 'stand-alone' SSP.

1.3.2 NON-STANDARD SPECIAL PROVISIONS (NSSPs)

Non-standard special provisions are prepared by a Provincial Functional Office, Regional program delivery unit or Design Consultant for use in a specific project and are included in contracts as determined by the design team. As with standard special provisions, NSSPs may be general or item specific. NSSPs are not numbered however they are coded when inserted in CPS.

Procedures for managing new NSSPs are detailed in Highway Design Bulletin 2008-003 and must be followed.

a) Provincial Functional Office (PFO) NSSPs

An NSSP developed by a PFO is typically a stand-alone SP and is applied usually to existing tender item(s) or new non-standard tender item(s). They are typically used on one or more contracts across the province to introduce new methods, materials, procedures or contract models on a trial or experimental basis. NSSPs developed by PFOs may be added to CPS when

consistency in application over an extended period of time is desired. An NSSP may then be promoted to an SSP on the recommendation of the PFO after experience has been gained and the concepts further developed and refined.

b) Regional NSSPs

A regional NSSP is typically created within a regional program delivery unit to be used in one or more contracts. These are used to convey project/item specific information for aspects of the Work that cannot easily fit into the contract documents. These NSSP's can be a Notice to Contractor, an Operation Constraint or item specific in nature.

Regional NSSPs found in the CPS Reference list are tried, successful and frequently used in contracts for that region. These NSSPs have been approved by the region or through the process identified in Highway Design Bulletin 2008-003 and may also be considered to be promoted to an SSP in the future. Efforts are being made to eliminate or convert NSSPs to SSPs, as appropriate. Regional NSSPs found in CPS may be used by any region at any time however they must be used consistently and under similar circumstances.

Where a unique design requirement exists in a project that is not covered by any existing documentation, a "project specific" NSSP can be introduced to address the situation. Since "project specific" NSSPs typically apply to one project only, they are not stored in CPS and therefore need to be submitted to the regional Contract Review Officer for review.

Duplication of regional NSSPs with similar content is discouraged. Writers of NSSPs are encouraged to conduct a search of CPS for SP's of similar content before writing any new NSSP's. It is preferable to use existing regional NSSPs as opposed to creating new NSSPs.

Provincial Functional Offices should be aware of regional NSSPs that are applicable to their subject areas. New requirements specified in regional NSSPs should be discussed with the appropriate Provincial Functional Office(s). The PFOs, in consultation with others, may then establish whether the subject requirements are appropriate for use on a province-wide basis. If appropriate, the requirements of the subject regional NSSP may be developed into a SSP and eventually into a Standard Specification. Highway Design Bulletin 2008-003 is intended in part to help reduce the proliferation of regional NSSPs.