

**MCA-MDT Highway Technical Committee Meeting
2/19/2020
MCA Offices**

I. Discussion of Proposed Spec Changes:

102.14 – Wage Rates

- Joe Green: This is a current special. Will be added to the specs. It is clarifying what build rates are and what highway rates are.
- Trevor Livesay: A you saying the rates here will not apply if the project is only highway?
- MDT: Correct

103.07 – Execution and Approval of Contract

- No comments

105.08.1 – Department Furnished Survey and Layout

- Joe Green. MDT is generally moving away from staking sites. If requested, we can still stake something.
- Guy Slaybaugh: Where would guardrail end sections and sign legs being staked come into this spec? – under appurtenances? If you compare this staking requirement to the MCA staking requirement, the MCA staking requirement provide far more specificity where this MDT staking requirements seems much looser.
- Jake Goettle: guardrail ends and sign legs will still be staked.
- Paul Thompson: we are asking to have specificity in the contractor survey requirements match the specificity MDT survey requirements. Make it clear what is staked and what is not. Some department employees only explicitly follow what is on the list and that can lead to problems in the field where something needs to be staked, but the MDT personnel only stake precisely what is on the paper in front of them and refuse to stake other items.
- Jake Goettle: we can review that request.

105.16 – Claims for Adjustment and Disputes

- Jake Goettle: We expect this spec to be a hot button item. I have heard bad things about the current claims process. I know this proposed process is a bit onerous on the MCA. However, this spec may also make it easier for us to review a claim. Sometimes a claim is submitted and we don't capture

exactly what is being claimed. This format comes from FHWA . . . it has apparently worked well for other states and AGCs.

- Guy Slaybaugh: there is a lot of info in this. As a group, we need more time to review this. We know MDT wants to take another look at the claims process to make it work . . . but this spec proposal appears to simply be more tripwires for the MCA. We appreciate MDT is looking to change the claims process. I think this should be approached delicately. We would like a longer comment and response period.
- Trevor Livesay: what is the intent here? This draft doesn't feel equitable. It feels like the intent is to make the contractor fail in the claim process.
- Jake Goettle: the intent is to have you guys really put forth the detail of a claim so that MDT can get right to the problem presented in the claim. MDT sometimes receives claims and required information is missing. We want more detail contractor instead of essentially having the MDT parse out the claim and put the claim packet together for the contractor. We appreciate the comments.
- Jodie Tooley: I do not like that the project manager subjectively gets to decide whether a claim has been properly presented or not. Additionally, with this long list of new requirements, the contractor should get more time to put the claim together.
- Guy Slaybaugh: Will this be implemented in April 2020?
- John MacMillan: Yes, but we can take it out of the April spec changes.
- Paul Thompson: The most unworkable part is that the project manager is the decider of whether or not the claims has been properly presented . . . but the project manager is usually the person who the contractor is having the dispute with. The project manager may have other motivations in making his subjective decision of whether or not the claim will be considered.
- John MacMillan: the intent is that higher-ups are involved in the claim process at this point and its not just the project managers making the decision.
- Paul Thompson: yes, but if that is the intent, the spec should say that.
- Guy Slaybaugh: we often feel that claims are not decided on the merits but are decided on a technicality and the review by the project manager means it could be thrown out on technicality. This should be altered.
- Jake Goettle: we can consider these matters and get a second draft out.
- Trevor Livesay: can we get a joint committee to work on this? This is a big deal.
- Jake Goettle: yes.

- Jake Goettle: Can you, as MCA members, identify anything in this spec that is a benefit to the contractors in this proposed spec?
- Guy Slaybaugh: yes . . . expectations should be clearly laid out; that's a benefit. But we want to make sure the claims process is something that is fair and works.
- Darin Reynolds: this suggested spec is looking to actually define the claim; help MDT really focus on all relevant info.
- Anthony Butcher: we should have additional time to file, especially with partnering.
- Jake Goettle: our mindset is that the claim process only begins when the partnering process fails.

108.07 – Contract Time Holiday Assessment

- Nick Miller: I see some issue with a staged construction. Would this apply to 4th of July? How should this be dealt with?
- MDT: it should be dealt with up front at the time of contracting.

108.07.5 - Extensions

- Guy Slaybaugh: As drafted, there is a possibility that this spec either gives the contractor everything from 1 day to 30 days to request the extension depending on when the normal update is required. Can we get a change saying either 10 days or on the next required schedule update? The time available to act should be more standard.
- John MacMillan: we are trying to clarify that with this spec. We can't write a spec for every situation.
- Jodie Tooley: can we say something like "less than 10 business days?"
- Jake Goettle: Please send that in as a comment.
- Guy Slaybaugh: at the end of the day, people pay attention to what is written in the specs so the specific language matters.

108.08 – Failure to Complete on Time

- Paul Thompson: if the Liquidated Damages (LDs) are shifted into the claims process, do we only have 1 day to submit the notice of claim?
- Guy Slaybaugh: is there still 14 days to dispute the LD?
- Paul Thompson: many times, we don't know if we have LDs until the end of the entire project – so it is a little unclear when exactly we would need to file the claim for the LDs if it is moved into the normal claims process.
- Nick Miller: if LDs are moved into the claims process, all of the new requirements in the updated claims process spec clearly do not apply if LDs

are the only thing at issue. The whole arrangement doesn't seem all that clear of what is required and what is not.

- Jake Goettle: the reason for this update is to take the commission out of the LDs decision process. This was to get a better mechanism to allow the contractor to object to LDs.
- Guy Slaybaugh: is this just for the end of the entire contract process?
- Jake Goettle: yes.
- Trevor Livesay: should we leave a deadline for when the contractor is required to submit a LDs claim? – possibly a certain amount of time after the contractor has certified complete or something to that effect?
- Jake Goettle: we can work with that. That is a good suggestion. That gives it a timeframe.

109.04.02 – Force Account Basis

- Kathy Terrio: the reason for this change is to try to get force account applied uniformly across the state. This appears to have otherwise been open to interpretation and inconsistent application.
- Jodie Tooley: the word “may” in the phrase “may be increased” should be a requirement. It should be “shall” or “must.” The other thing is \$50/hr is not enough. We pay good employees above that rate. If we put them on that work, MDT should pay for that. Also, \$50/hr doesn't cover overtime. They should be paid what is on the certified payroll.
- Kathy Terrio: there are some areas where they are limited to \$50/hr such as a salaried supervisor. I see your point if it is straight time or overtime . . . but the \$50/hr established a rate for the salaried folks out there.
- Jodie Tooley: but this spec appears to be specific to wage earners? What is MDT policy on the salaried supervisors?
- Kathy Terrio: longstanding internal MDT guidance says that MDT does not pay for supervisors.
- Guy Slaybaugh: the MCA's position is that MDT needs to pay for the supervisors who are there. Supervisors need to coordinate the work, order materials, and perform other necessary tasks. . . . the supervisor is performing tasks that benefit the MDT. Most of the work needs a superintendent there. We feel supervisor should be paid for being there.
- Nick Miller: I don't think MDT wants the responsibility of managing a crew and the related liabilities. I don't think you would get an objection from MCA if MDT is willing to pay a max of \$50/hr for a supervisor.
- Paul Thompson: where is this policy of not paying for supervisors coming from?

- Kathy Terrio: it's a long-standing MDT memo.
- Paul Thompson: historically, force account work was done under the supervision of MDT . . . is that still the case?
- Jake Goettle: We cannot answer that question right now. We would need different people here.
- Kathy Terrio: the supervisor was considered to be part of the overhead of a contractor and therefore the burden of the contractor. We will take another look at this one.

203.03.2 - Embankment

- No comment

208.03.4 - Seeding

- Zac Mader: Would MDT consider making this a pay item?
- Guy Slaybaugh: this ties into our new business where in can be addressed more fully.

301.03.4A – Optional Blended Base Course

- Guy Slaybaugh: can we get an exception for a small quantity?
- John MacMillan: we do have a special that says  milling isn't needed for small quantities.

401.03.23 – Surface Tolerance for Flexible Pavement

- Anthony Butcher: my issue is the full travel lane width requirement. In many cases, the profile only shows one side of a lane to be high and only part of the lane requires grinding.
- Paul Thompson: by requiring the entire lane to be ground, you would be forcing us to grind something that does not need grinding.
- John MacMillan: some people were only grinding the wheel paths – this is to address that issue.
- Guy Slaybaugh: what I am seeing is that the prior spec didn't have enough teeth . . . but I think this draft is too much and doesn't actually accomplish the MDT goal.
- John MacMillan: I think it should be a case by case basis. We don't need to grind something that doesn't need it . . . this draft spec is supposed to address that.
- John MacMillan: I think we should move on to the next spec.
- Paul Thompson: its sounds like the decision on this spec is already made and MDT is unwilling to change it.

- Jake Goettle: we are trying to correct the profile.
- Anthony Butcher: What are the thoughts on the class 1 profiler in lieu of a straight edge? There is nothing in the specs that limits the length of surface that can be profiled.
- Guy Slaybaugh: it doesn't appear the profiler is the right tool for some of these short stretches of road.
- John MacMillan: using the profiler is just an optional tool.
- Paul Thompson: in the main specs, there is restrictions on where the profiler is to be used. We have had struggles with the profiler in certain urban stretches.
- Darin Reynolds: Where profiler will be used will be specified in the contract. The contractor can say where the profiler would not be appropriate.
- Anthony Butcher: What we are saying is that short sections are difficult in the ride truck. Nothing says in the specs when the profiler will be used and when it will not be.
- Jake Goettle: Please submit comments on this topic.

401.03.24 – Rumble Strips

- Brad Meyer: I recall from the last meeting that we had this spec fixed – however, as written today it is not fixed. The spec should say: no fog seal if rumble strips installed so long as chip sealed in that season. If not, then fog seal. Are you saying we have to grind regardless of chip seal?
- Jake Goettle: Jake yes.
- Guy Slaybaugh. The ten days was going to be thrown out so long as chipped sealed that season.
- Brad Meyer: we would like input on whatever change in pattern you may institute to “mumble strips”.

402.03.9 – Fog Seal and Tack Coat Residual

- No comments

551.08.8 – CLSM Testing

- No comments

556.03.9 – Welded Stud Shear Connectors

- No comments

558.03.7 – Permanent Casing

Joe Green: we have had internal discussion on this spec . . . there will likely be changes. The change will be that the contractor can paint after installation.

558.04.4 – Drilled Shaft Casing

- No comment

559.04 – Furnish Pile

- No comment

603.03.4 – Bedding and Backfill

- No comment

604.04 - Manholes

- Mike Meredith: The spec should measure from top of the lid instead of top of the grate.
- Joe Green: We have had internal conversations here. I think this draft spec is overly complicated. We need comment and input here. We need help.
- Guy Slaybaugh: the invert elevations are not always given. Without that information, we can't measure properly and know what the correct footage is. We do not always get invert elevations.
- Mike Meredith: what you've written will not give accurate pricing. The price per foot is not equivalent. Install is not accounted for. It seems like MDT is attempting to change the spec for a desired effect, but this draft spec will not accomplish the goal. This spec doesn't make sense. It should be priced "per each."
- John MacMillan: that was actually our suggestion. Hydraulics overruled us. Please submit a comment.
- Steve McEvoy: the goal was to walk in lock step with MT public works . . . but I don't think it works in this application.
- Mike Meredith: the contract should just pay to the nearest foot . . . no inches.
- Steve McEvoy: it sounds like we are generally in agreement here.
- Mike Meredith: there should be a manhole finish requirement.
- Mike Meredith: the written documents and specs have to say what is meant.

606.03.1 – Guardrail installation instructions

- Guy Slaybaugh: these are electronically submitted now, right? Can we strike the requirement of submitting two copies?
- Jake Goettle: yes.

621.02 – Materials

- No comment

707.01 – Joint materials

- No comments

713.08 – Reclamation Seed

- No comments

II. MCA New Business

SWPPP

- Guy Slaybaugh: we are seeing a lot of variation in when SWPPPs can be transferred or terminated.
- Zac Mader: My concern is the termination specifically. Would you allow the SWPPP to be terminated before the contract is done? For instance, a chip seal situation? The chip seal is all that is needed and the soil has already reached final stabilization? Another one is an instance where there is a new EPM and he is just coming up to speed . . . but stabilization has already been achieved?
- Tom Martin (MDT Enviro): you can terminate a SWPPP if there is final stabilization and substantial contract completion. MDT would want to walk through, but yes. You can terminate if final stabilization achieved.
- Guy Slaybaugh: do the specs currently provide for that?
- Zac Mader: I think the spec says we cannot terminate.
- Tom Martin: the chips can be a sensitive item. You may still need to provide some BMPs. MDT has got violations from USFWS and the Corps for 404 permitting and ESA takings regarding bull trout. That was an important development because now we have to consult with the USFWS for any projects in bull trout areas or any other ESA species.

Installing additional BMPs

- Guy Slaybaugh: We would like the EPMs to be well informed. We are struggling to get paid for requested additional BMP items. If there are additional items, we should be paid for them.
- Jake Goettle: we will send out some guidance.
- Tom Martin: there is really only two instances where MDT can require certain BMPs . . . and those should be paid for by MDT.

Concrete Aprons for manholes and water valves

- Guy Slaybaugh: are we staying with diamond shape or circular?
- Steve McEvoy: we have two options. I think the circular ones are becoming more common. They have good seals, are adaptable, etc. I think it makes sense to include a circular design. We should include detailed drawing for circular.

III. MDT New Business

Mobilization

- Jake Goettle: there has been internal discussion about capping mobilization. We have seen some abuses. We want it to be used appropriately. Any comments?
- Anthony Butcher: I would be a firm “no” on any changes.
- Paul Thompson: mobilization is one of the few safe items where a contractor knows they are going to be paid. Every unit price underruns or overruns. That known income is important.
- Jake Goettle: we are trying to put the right item in the right cost. We have seen 30% mobilization in some projects.
- Paul Thompson: are you seeing these increase on certain type of project? Is there a pattern?
- Jake Goettle: Mostly bridges. Although use of mobilization seems to be up for all project types.

Dwane Kailey Message

- Jake Goettle: someone from Kailey’s office will be at national AGC convention give a presentation on digital delivery. 3D plans, etc.

Detailed Drawings

- Steve McEvoy: we will be providing a link to detailed drawings. It’s a table that shows which detailed drawings have been revised.
- Oak Metcalfe: there is currently an index showing updates. We are going to try to simply provide a link to the materials manual. Not released yet, but we are working on it.
- Jake Goettle: any comments or problems with the electronic contracts?

Asphalt Institute

- Scheduled for March 17

IV. MDT Old Business

Partnering Guide

- Trevor Livesay: when can we see spec on partnering?
- Jake Goettle: we are looking for direction from the steering committee.
- David Smith: My thought is to phase partnering in this year and hold off for a year before a new spec is put into effect.
- Trevor Livesay: I thought required partnering was going to start being included in the contracts soon?
- Jake Goettle: It is moving in that direction.
- Jake Goettle: We have heard good things re: partnering.
- David Smith: we would like to see everyone at MDT who sees a contract to be involved in the partnering process.