

PROJECT SPECIFIC GUIDE

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***UPDATED Sep 6, 2011**

Today's Date: December 5, 2011

This "Project Spec Guide" contains various guides and examples to aid in developing special provision copied notes (SPCN) and special provisions (SP) for use in specific projects. These guidelines are a tool and are not intended to cover all situations or to replace individual judgment and quality control review. Actual application of these guidelines will depend on the design and intent of the proposal being developed. Thorough consideration should be given to whether a SPCN or SP is appropriate for a specific contract proposal and whether or not it conflicts with other standard or project-specific elements of the contract proposal documents prior to its inclusion in the final document assembly. See Sections [101.02](#) and [105.12](#) of the Specifications for definition and hierarchy of Contract elements.

These sheets may be found at the following locations:

Global Web Access: <http://www.virginiadot.org/business/const/spec-default.asp>

VDOT Only Access: http://insidevdot/sites/SanC/specs/2007specs/2007_Standard_Specifications/Forms/AllItems.aspx

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## **SOME PROCUREMENT LAW REQUIREMENTS AND RESTRICTIONS TO REMEMBER WHEN PREPARING SPECIAL PROVISION COPIED NOTES (SPCN) AND SPECIAL PROVISIONS (SP) FOR CONTRACTS ADVERTISED BY VDOT**

### **Value Engineering (pre-advertisement) and the use of sole source, proprietary, patented items and brand names**

The following is taken from a letter to Project Managers from the VDOT State Contract Engineer, Mr. Don Silies ([Don.Silies@VDOT.Virginia.gov](mailto:Don.Silies@VDOT.Virginia.gov)).

#### **Value Engineering**

State law requires a Value Engineering Study be performed on **all** projects costing more than \$5 million, including *paving and other maintenance type projects*. We have an abbreviated process for these types of projects. Contact the State Value Engineer, Mr. Ron Garrett ([Ron.Garrett@VDOT.Virginia.gov](mailto:Ron.Garrett@VDOT.Virginia.gov)) when you have a candidate project. He will help you decide what the proper level of VE study is needed.

#### **Sole Source, Proprietary, Patented Items and Brand Names**

The use of sole source, proprietary, and patented items should be avoided except in the rarest of occasions where nothing else will do. Special approvals are necessary to include these items in a contract. The use of brand names should be used with caution. There is some confusion on the definition and differences between these items, so I will attempt to clarify it below.

- **Sole Source Items**

A Sole Source Item is any product used on a project where the product may be procured from only one place, and is therefore subject to no price competition. This is a very rare situation. State procurement regulations require approval to employ a sole source item on a project. To do so, you must write a letter to me explaining why it is in the public's best interest to use this sole source item. I will seek authorization to use the sole source item. There must be a very compelling reason to do this. Please do this well in advance of the advertisement date because the approval may require authorization from outside of the Department. For federally funded projects, FHWA approval is required as well.

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- **Proprietary Items**

A Proprietary Item is different from a sole source in that even though it is available from only one manufacturer, it is sold by various vendors and thus has some price competition. State approval is not necessary but on federally funded projects, FHWA approval is required. Discuss the need with the FHWA area engineer prior to submission of the project for advertisement. Send me the finding of public interest and the Scheduling and Contract Division Federal Submissions staff will seek approval from the FHWA.

- **Patented Items**

Patented items can only be used if there is no unpatented equal; or it is the only item that will synchronize with existing systems; or it is part of a sanctioned research project. It should be noted in the contract documents when patented items are specified so the contractor can price the item to cover associated royalties and licenses. Be aware that processes may also be patented, so care should be exercised when writing specs that you are not infringing on a patent.

- **Brand Names**

It is perfectly acceptable to use a brand name products such as 3M, Corten, Rosphalt, etc. so long as you say "or equal" in the description or specification. There are usually competing items that will serve the same purpose. Prior to including a brand name in a spec you should verify that there are at least two additional products that meet the specs to compete with a brand name. If not, it is likely a proprietary item.

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GENERAL TIPS AND EXAMPLES FOR PREPARING SPECIAL PROVISION COPIED NOTES (SPCN) AND SPECIAL PROVISIONS (SP) FOR CONTRACTS ADVERTISED BY VDOT

To expedite the Department's review and preparation of Special Provisions and Special Provision Copied Notes for use in Bid Proposals/Contracts, VDOT requests these procedures be followed:

1. Pay close attention to what you are preparing as to where it falls in the hierarchy of Contract elements. Sections [101.02](#) and [105.12](#) of the Specifications provide the definition and hierarchy of Contract elements. Each element is intended to be a single part of a complementary group of elements that together provides a complete description of the work. This is especially important if you write a project-specific plan note, general note, or include a project-specific drawing. Always look "up-the-ladder" of priority to make sure that you don't have a Contract element of higher priority that overrides what you intend to be accomplished. In cases of conflict the hierarchy of Contract elements will govern when claims are processed. Remember, if the work that you specify in your project-specific plan note, general note, or drawing is overridden by a higher priority element that requires less work; it could be claimed that additional compensation (through a work order) should be required to complete the work specified in your project-specific requirements. In such a case a higher priority element should be used to express the project-specific requirement. The elements at work in a Contract are listed below with the highest governing item appearing first and the least governing item appearing last. The following order of priority will apply:

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- a) **“Special provision copied notes (SPCN)”**; and **“Pay items and pay units listed in the “Schedule of Items in the Contract”**. Note: Because these two contract elements are of equal priority, it is important that any pay item and pay unit in a SPCN matches what is listed in the “Schedule of Items” in the Contract. When these two conflict, resolution can be more difficult because there are no direct instructions in the Specifications that determines which prevails.
 - b) **“Special provisions (SP)”**.
 - c) **“Plans”**; and **“Sketches, drawings, general notes and other written information that are not included in special provisions or special provision copied notes used in No Plan and Minimum Plan Concept projects”**. Note: Because these contract elements are of equal priority, it is important that none conflict with another. When these conflict, resolution can be more difficult because there are no direct instructions in the Specifications that determines which prevails.
 - d) **“Supplemental Specifications (SS)”**
 - e) **“Specifications”**
 - f) **“Standard Drawings”**. Note: Calculated dimensions on standard drawings, unless obviously incorrect, will govern over scaled dimensions.
2. Write Special Provisions only when there is a definite need not covered by the Department’s *Road and Bridge Specifications*, Supplemental Specifications, Special Provisions or Special Provision Copied Notes. The tendency to recreate or to add unnecessary verbiage should be avoided.
 3. Division I of the *Road and Bridge Specifications* has been reviewed by the Attorney General’s Office and is applicable to all contracts with few modifications being necessary. Extreme care must be exercised in amending this Division in order to avoid creating situations which might weaken the Department’s legal position. If it is necessary to amend Division I, there must be written justification for each change. Changes to the Division 1 must be submitted along with a brief explanation as to the reason for the change to the Specifications Engineer, Welford King (Welford.King@VDOT.Virginia.gov) for review and approval prior to insertion into the proposal. Scheduling and Contract Division, Specifications Engineer, 1401 E. Broad St., Richmond, VA 23219, (804) 786-2859.

We ask that you specifically remember these points when developing a Special Provision Copied Note or Special Provision:

- **Do not say it twice** - If it is in the *Road and Bridge Specifications Book* or on the Plans, there’s no need to repeat it in a Special Provision or Special Provision Copied Note. Stating something twice will not make it happen; enforcement of the specification will make it happen.
- **Do not mix non-standard items of work with standard pay items** - The pay item codes are available on the internet. Please use standard pay items when available. If the non-standard or included items cannot be justified satisfactorily, the item will be changed and quantities on the plans will have to be recalculated.
- **There are always exceptions to the rule** - just have it documented. If in doubt - we will assist you.
- **Review** As part of the concurrent engineering process, this office will be writing and reviewing provisions and will need submittals prior to the PAC Conference (See Column 3 in Contract Documents and Processing Cut-off Dates for Advertisement Spreadsheet)

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E-mail address: Please title your e-mail with Project Number, Advertisement Date, and PPMS or Order number, if available, such as 0095-075-101, C501 OCT 2002 AD PPMS #11111.

Instructions for developing project specific Special Provisions and Special Provision Copied Notes.

Please turn off your *track change default*. The track change is an automatic feature in Word. It causes the saved and correct documents to revert to either prior changes, formatting or illegible text. When it is processed to develop the proposal, it will cause strange text and incorrect symbols. Documents will be sent back to the submitter for corrections if this continues to happen.

All Special Provision Copied Notes shall have (SPCN) after the date. This is to legally define it as a Special Provision Copied Note.

Use the following format:

- Software.....MS Word
- Font**Arial 10**
- MarginsOne Inch (left, right, top & bottom)
- Tabs0.3
- Justification**Full**
- Headers & Footers0.5 margin- left blank (an electronic program will place page numbers in the footer) No written or numeric headers or footers of any kind will be acceptable.
- Title.....All provisions shall be titled and shown in bold capital letters. All provisions shall be bookmarked. Bookmark instructions are shown herein

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**EXAMPLES FOR DEVELOPING
SPECIAL PROVISION COPIED NOTES AND SPECIAL PROVISIONS:***Special Provision Copied Note*

SAMPLE No. 1, the bookmark is shown as hidden text in { }

CONTRACT RENEWAL OR EXTENSION - The Department may extend the Contract in order for the Contractor to complete scheduled work or work underway. In addition, the Department reserves the right to extend the Contract for intervals of one year (not to exceed two intervals) providing the Department and Contractor are in agreement and the following conditions are met. The Contractor's bonding agency agrees to the Contract Renewal; no increases in contract unit prices and no new bid items are added.

1-19-96 (SPCN)

SAMPLE No. 2, the bookmark is shown as hidden text in { }

SECTION 413.02 PROCEDURES of the Specifications is amended to include the following:

Heating, welding, drilling, straightening, other construction operations or demolition of a Type B structure coated with a hazardous material which may pose hazards for employees shall have environmental and worker protection in accordance with the OSHA requirements and regulations. In addition, a detailed site-specific worker health and protection plan and detailed environmental plan shall be submitted in accordance with the requirements of Section 411.07 of the Specifications.

6-6-96 (SPCN)

(Note: The title is **BOLD CAPITAL LETTERS** and the date and "(SPCN)" are located at the end of the Copied Note, also have a return before and after the copied note for spacing in the Bid Proposal.)

The title of the Copied Note is to be bookmarked for Department use (Highlight the title and keystroke Alt - shift -o. A window will appear and the highlighted title will be in the entry blank. Insert the cursor into the entry blank at the end of the title and add five spaces, then enter the date (MO-DA-YR.) and the "(SPCN)", select the mark button and the copied note will be bookmarked and ready for insertion into the contract. If the title or date is changed the corresponding book mark must change to match.

Special Provision Copied Note(s) are placed on the server in the y file on the server (example: y29YR2003).

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SPECIAL PROVISION

SAMPLE No. 1, the bookmark is shown as hidden text in { }

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
WILDFLOWER PLANTING

May 20, 1994

I. DESCRIPTION

This work shall consist of developing flowerbeds and planting wildflowers of the varieties specified at the locations designated on the plans.

II. MATERIALS

Seed shall conform to the requirements of Section 244 of the Specifications...

SAMPLE No. 2, the bookmark is shown as hidden text in { }

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
UTILITY ADJUSTMENTS
(VA. POWER, BELL ATLANTIC)

February 2, 1997

SECTION 105.07 of the Specifications is amended to include the following:

During the life of this project, the utility facilities owned and operated by the utility companies shown above will be adjusted as necessary, either prior to project construction or in conjunction with project construction when necessary.

The Contractor shall not consider...

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(Note: The heading is centered and titles are all **BOLD CAPITAL LETTERS** and the date is two returns below the title and right justified)

The title of the Special Provision is to be bookmarked for Department use (Highlight the title and keystroke Alt - shift -o. A window will appear and the highlighted title will be in the entry blank. Insert the cursor into the entry blank at the end of the title and add five spaces then enter the date (MO-DA-YR.), select the mark button and the copied note will be bookmarked and ready for insertion into the contract.

Page numbers will be established by a computer program and an index developed from each provision or copied note that has been "Book Marked".

There are times when a Designer or Resident Engineer will request that an existing Special Provision or Copied Note in the supplemental provisions be revised for a specific project. The special provisions and copied notes in the program have been approved by the FHWA and are to remain unchanged. However, when needed, you may choose to alter one of these provisions, by the following procedure:

First copy the Special Provision or Copied Note to another file and do the following:

Sample - Copied Note, the bookmark is shown as hidden text in { }

~~(c102d0b-0702)~~ **SECTION 102.04 EXAMINATION OF SITE OF WORK AND PROPOSAL** of the Specifications is amended to replace the first sentence of the third paragraph with the following:

In the event a word, phrase, clause, or other portion of the plans, specifications, or other contract documents is alleged to be ambiguous, the Bidder shall submit to the Contract Engineer a written notice of same prior to the date of receipt of bids, and request an interpretation thereof.

~~8-1-91, Reissued 7-9-02~~ (SPCN)

You are to delete the file reference and advertisement date [(c102d0b-0702)] (the advertisement date referred to is the advertisement that the copied note begins being used). The date the copied note is created or last modified [8-1-91 Reissued 7-9-02] is to be changed to the date of your revision and if possible alter the title to avoid confusion. The copied note's bookmark is to be removed and redone for the new corresponding title. The copied note is to be added at the end of the FHWA approved copied notes along with all other project specific copied notes in the Bid Proposal.

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The revised project specific Copied Note will be as follows:
(the bookmark is shown in hidden text in { })

SECTION 102.04 EXAMINATION OF SITE OF WORK AND PROPOSAL of the Specifications is amended to replace the first sentence of the third paragraph with the following:

In the event a word, phrase, clause, or other portion of the plans, specifications, or other contract documents is alleged to be ambiguous, the Bidder shall submit to the Contract Engineer a written notice of same 5 days prior to the date of receipt of bids, and request an interpretation thereof.

5-12-06 (SPCN)

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Sample - Special Provision, the bookmark is shown as hidden text in { }

S404D0B-0702

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR
SEALING EXPANSION JOINTS

~~June 14, 2000~~
~~Reissued July 9, 2002~~

I. DESCRIPTION

This work shall consist of cleaning and sealing expansion joints in accordance with the contract documents and as directed by the Engineer.

II. MATERIALS

Expansion joint filler and sealer materials shall conform to the requirements of Section 212 of the Specifications.

III. PROCEDURES

Expansion joints shall be cleaned and shall be free of oil, grease, existing joint material or any other foreign material. Loose material shall be removed from the joint with oil-free compressed air delivered with not less than 120 cubic feet of air per minute and a nozzle pressure of not less than 90 PSI and not more than 200 PSI.

The Contractor shall protect the edges of pavement adjacent to the joints to be cleaned.

The Contractor shall install joint filler and sealer materials in strict accordance with the manufacturer's written instructions.

Expansion joints shall be filled and sealed in accordance with the requirements of Section 404.05 of the Specifications. Joints to be filled shall be completely dry and the ambient air temperature shall be at least 45° F. The applied sealer and finished joint shall be free of entrapped air. Finished sealer shall conform to the lines and grades of existing pavement surfaces.

IV. MEASUREMENT AND PAYMENT

Clean and seal expansion joints will be measured in linear feet and will be paid for at the contract unit price per linear foot. This price shall be full compensation for cleaning joints, furnishing and installing joint filler, joint sealer, removal and disposal of debris, and for all material, labor, tools, equipment and incidentals necessary to complete the work.

Payment will be made under:

Pay Item	Pay Unit
Clean and seal expansion joint	Linear foot

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The revised project specific Special Provision will be as follows:
 (The bookmark is shown in hidden text in ¶)

VIRGINIA DEPARTMENT OF TRANSPORTATION
 SPECIAL PROVISION FOR
CLEANING AND SEALING EXPANSION JOINTS

May 12, 2006

I. DESCRIPTION

This work shall consist of cleaning and sealing expansion joints in accordance with the contract documents and as directed by the Engineer.

II. MATERIALS

Expansion joint filler and sealer materials shall conform to the requirements of Section 212 of the Specifications.

IV. PROCEDURES

Expansion joints shall be cleaned and shall be free of oil, grease, existing joint material or any other foreign material. Loose material shall be removed from the joint with oil-free compressed air delivered with not less than 120 cubic feet of air per minute and a nozzle pressure of not less than 90 PSI and not more than 200 PSI.

The Contractor shall protect the edges of pavement adjacent to the joints to be cleaned.

The Contractor shall install joint filler and sealer materials in strict accordance with the manufacturer's written instructions.

Expansion joints shall be filled and sealed in accordance with the requirements of Section 404.05 of the Specifications. Joints to be filled shall be completely dry and the ambient air temperature shall be at least 45° F. The applied sealer and finished joint shall be free of entrapped air. Finished sealer shall conform to the lines and grades of existing pavement surfaces.

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Payment will be made under:

Pay Item	Pay Unit
Clean and seal expansion joint	Linear foot

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GUIDANCE IN DEVELOPMENT AND REVIEW OF SPECIFICATIONS

In the future, further guidance specific to VDOT, will be added to this document similar to that developed in the FHWA Technical Advisory T 5080.16 <http://www.fhwa.dot.gov/construction/specreview.cfm>. The FHWA Technical Advisory is far more in depth and deals more with what FHWA expects to see which could be beneficial for "PS&E" submission.

[FHWA Technical Advisory T 5080.16](#) in "pdf" format is also available.