

codewise

# SPECIFIC INSTRUCTIONS TO THE CONTRARY

BY CHARLES J. CARTER, SE, PE, PhD, DAVID B. RATTERMAN AND MICHAEL A. WEST, PE

With the *CoSP* comes great power—  
and great responsibility.

**ANSI/AISC 303-16**, the 2016 AISC *Code of Standard Practice (CoSP)*, defines the statement of custom and usage for fabricated structural steel, and provides the usual agreement for buying and selling it. This is important to all; you don't have to reinvent the wheel every time you have a new project! Following the *CoSP* also helps make bids comparable.

At the same time, individual projects may have different or special conditions that are not adequately addressed in full or part in the usual agreement. Accordingly, the *CoSP* respects the freedom for parties involved in the design, fabrication and erection of structural steel to agree to "specific instructions to the contrary" in the contract documents.

Specific instructions to the contrary are sometimes necessary or desirable, but those instructions often are not specific in nature. Beyond a lack of specificity, there have been instances where instructions are written that violate building code provisions and/or other applicable laws, instances where attempts have been made to edit the *CoSP* as if it were a template and instances that attempt to dictate a commercial advantage to an individual project participant.

Specific instructions are easy to provide if you know how. It's similarly easy to avoid missteps and pitfalls like the ones mentioned above. This article will help you in both cases.

## The Don't List

First, let's look at the things to avoid. That will make it a lot easier to cover the *do* list.

**Don't write instructions that violate the building code or applicable laws.**

Portions of the *CoSP* have been incorporated by reference into the *International Building Code*. The *IBC* references ANSI/AISC 360 (the *AISC Specification*) and ANSI/AISC 341 (the *AISC Seismic Provisions*), and these documents both reference parts of the *CoSP*.

A complete list of these parts is provided at [www.aisc.org/303IBC](http://www.aisc.org/303IBC). That summary looks primarily at the 2015 *IBC* but also relates well to what is currently developing for the 2018 *IBC*:

|  | IBC version                          |                                      |
|--|--------------------------------------|--------------------------------------|
|  | 2015                                 | 2018                                 |
| <i>IBC</i> Chapters 22 and 17 make reference to: | ANSI/AISC 360-10<br>ANSI/AISC 341-10 | ANSI/AISC 360-16<br>ANSI/AISC 341-16 |
| ANSI/AISC 360 and 341 make reference to:         | AISC 303-10                          | ANSI/AISC 303-16                     |

A similar relationship also exists in recent prior versions of the *IBC*, and it is worth noting that this relationship predates the existence of the *IBC*. For example, Section 1201.1 in the 1981 edition of the *BOCA Basic Building Code* incorporated



**Charles J. Carter** is president of AISC and former Secretary of the Committee on the *Code of Standard Practice*.

**David B. Ratterman** is a member of Stites and Harbison's Construction Service Group, general counsel to AISC, AISC's Board Secretary and a member of the *Code* Committee.

**Michael A. West** is vice president and treasurer of Computerized Structural Design and is also a member of the *Code* Committee.

the 1978 AISC *Specification*, which in turn referenced the 1976 AISC *CoSP* in its Section 1.28.8.

Section 3.1 in the *CoSP* is one of the referenced incorporations. While alternatives can be used as provided in Section 104.10 of the *IBC* and Section 1.1 of the *CoSP*, the corresponding alternative instructions must be specific, clear, complete and suitable. We have seen many attempts and few successes. Note that the requirements in Section 3.1 of the *CoSP* are specific, clear, complete and suitable as written—so much so that they are specifically referenced in the *IBC*.

What should you do? Well... don't violate the building code or break the law.

**Don't attempt to dictate a commercial advantage for yourself or another project participant.**

The *CoSP* is a balanced, consensus document that is written in a "party-neutral" manner. It is called ANSI/AISC 303-16 because it is accredited by the American National Standards Institute (ANSI) as an American National Standard. Among other things, this means that the composition of the Committee that developed it is balanced among user, producer and general-interest participants. Accordingly, it includes structural engineers, architects, a building official, a general contractor, fabricators, detailers, erectors, inspectors and an attorney.

This breadth and balance of interest sets a high bar for any specific instruction to the contrary, and especially those based in commercial interest. The *CoSP* has been written in a manner intended to reflect equitable balance between the engineer's commercial interests and the fabricator's commercial interests where there is usually no contractual relationship between the fabricator and the engineer.

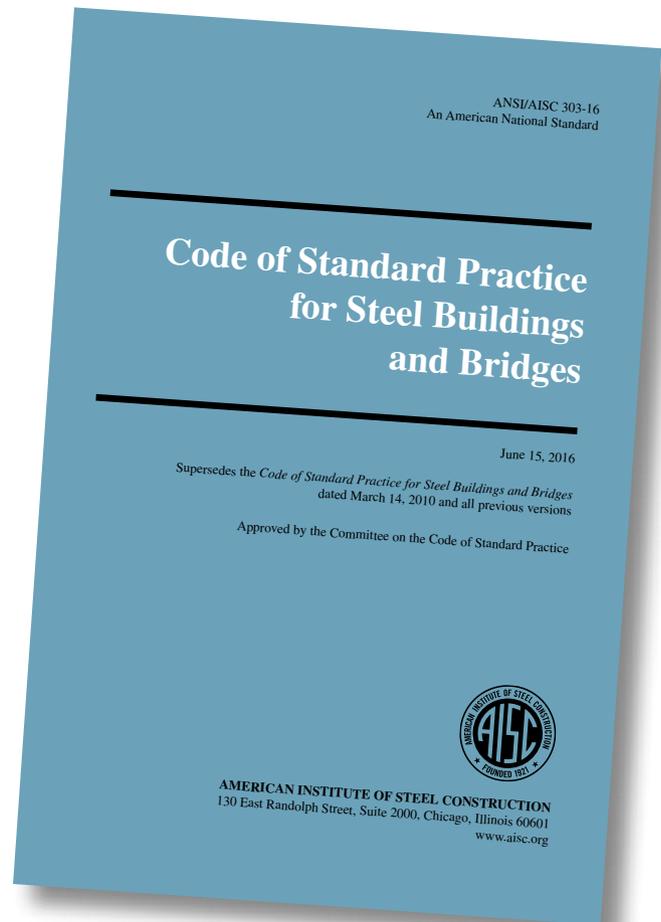
In some instances, specific commercial clarifications may be necessary to reflect special project requirements. However, upsetting the balance reflected in the *CoSP* could amount to an unwarranted interference in the contractual relationship between the fabricator and a general contractor.

What should you do? Keep to specific instructions that relate to technical requirements and different or special conditions.

**Don't attempt to edit the *CoSP* as if it were a template or model project specification.**

There is a fundamental distinction between providing specific instructions to the contrary and redrafting the *CoSP*. The former is explicitly permitted in Section 1.1 of the *CoSP*. The latter is not. A balanced, consensus committee wrote the coordinated set of requirements embodied in the ANSI-accredited *CoSP*. It is a unified document with requirements that are intended to work, and be read, together.

Redrafting efforts we've seen are often incomplete and do not correlate well with other requirements in the *CoSP*. Some are also self-serving and counter to the balance that is embodied in the *CoSP* as written. These kinds of contrary changes usually lead to unintended ambiguities and the consequences



rarely benefit any of the parties involved, including the party that initiated the redrafting. Ultimately, the use of strike-outs and/or additions to the language that was approved following ANSI consensus procedures is not authorized by virtue of the copyright AISC holds on the *CoSP*.

What should you do? Limit contrary language to the specifics that are needed for different or special conditions, and just write the specific instruction you want in the contract documents, which govern over the *CoSP* per Section 1.1 of the *CoSP*.

### The Do List

We already gave some things to *do* as we talked about the *don'ts*. Here are some more:

#### **Be clear and complete.**

When you need to write a specific instruction that is contrary to a standard requirement in the *CoSP*, it often is helpful to note in the instruction the section number it affects in the *CoSP*. Also, think it through and provide the entire context of what you are stating. If what you require is related to or affects more than one section in the *CoSP*, this is even more important.

**Add a requirement when you need something that's not addressed.**

The *CoSP* does not cover everything, just the common things that apply to the majority of projects. If you have different or special conditions and need to address them beyond the standard requirements in the *CoSP*, you can do so by writing a requirement in the contract documents. A few examples include:

- Section 6.4.2 provides the tolerance for a curved beam that has single curvature. Perhaps you have a beam with double curvature.
- Section 7.13 provides tolerances for column plumbness for columns that are vertical. Perhaps you have columns that are intentionally designed with the top not directly above the bottom.

In these and similar cases, you can address the different or special need by writing what you want as a requirement in the contract documents. As good general guidance, look at the form and content of the comparable standard requirement in the *CoSP*, when one exists, as a guide. If nothing comparable exists, ask a fabricator what can be done and how to specify it.

**Define your choice when the *CoSP* asks you to choose or specify something.**

There are cases where the *CoSP* depends upon a choice being made and defined in the contract documents. A few examples include:

- Section 1.4 asks you to define whether a design model controls over design drawings or vice versa, in the case that both are provided.
- Section 3.1.1 and 3.1.2 ask you to define connections as option 1, 2, 3A or 3B.
- Section 10 asks you to define the class of AESS, when applicable, as AESS 1, 2, 3, 4 or C.

These and similar conditions are not so much specific instructions to the contrary as they are instructions that are needed to know what requirements in the *CoSP* are applicable.

Nonetheless, you can address them by writing what you want as a requirement in the contract documents.

**State a specific requirement to the contrary when your project has a specific need that differs from what the *CoSP* says for the standard case.**

Sometimes, the standard case doesn't work for a specific project. A few examples include:

- Section 6.5.2 provides for surface preparation meeting the requirements in SSPC-SP2. Perhaps you have a special coating that requires a better level of preparation.
- Section 4.4 provides 14 calendar days for the return of approval documents. Perhaps your project schedule demands a faster turnaround or your project team requires more time.
- Section 10 provides requirements for the fabrication, shipping and erection of AESS. Perhaps your project requires alternative measures

In all of these and similar cases, it is just a matter of stating what is required in the contract documents.

**Specific and Successful**

The *CoSP* is significant and important to the process of designing, buying and selling fabricated and erected structural steel. Its provisions are balanced, fair and consensus-based, and they provide for the vast majority of work in standard form. They represent the most efficient approach for the usual case, and changes will probably increase the cost of the work. Nonetheless, specific instructions to the contrary are permitted and in some cases needed to suit specific project conditions. Following the *do's* and avoiding the *don'ts* will help you make those specific instructions appropriate and successful. ■

You can download a copy of the 2016 AISC *Code of Standard Practice* at [www.aisc.org/2016code](http://www.aisc.org/2016code). You can also order a print copy by calling 800.644.2400.