

Before final acceptance, the highway, borrow pits, and all areas occupied by the Contractor in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment; and all parts of the work shall be left in condition acceptable to the Engineer.

**105.14 NO WAIVER OF LEGAL RIGHTS.**

Final acceptance shall not prevent the Department from correcting any measurement, estimate, or certificate made before or after completion of the work. The Department shall not be prevented from recovering from the Contractor or Surety, or both, any overpayments made on the Contract. A waiver on the part of the Department of any breach of any part of the Contract shall not be held to be a waiver of any other or subsequent breach.

The Contractor, without prejudice to the Contract terms, shall be liable for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Department's right under any warranty or guaranty.

**105.15 FURNISHING RIGHT OF WAY.**

The Department is responsible for securing Rights of Way in advance of construction. Exceptions will be indicated in the Contract.

**SECTION 106  
CONTROL OF MATERIAL**

**106.01 GENERAL METHODS OF MATERIALS ACCEPTANCE.**

Materials shall meet the quality requirements of the Contract. Materials furnished and used in a completed item of work shall be new and unused.

Materials such as mineral aggregates, bituminous mixtures, and Portland Cement Concrete will be tested and approved as provided in the section of work under which the item is performed. For other materials a "Certificate of Compliance" shall be submitted stating that such materials or assemblies fully comply with the Contract requirements. Each lot or shipment of materials delivered to the work must be accompanied by a "Certificate of Compliance" in which the material is clearly identified. The "Certificate of Compliance" shall be submitted to the Project Engineer and shall provide the following information:

- A. Project number to which the material is consigned.
- B. Name of Contractor to which the material is supplied.
- C. Kind of material supplied.

- D. Quantity of material represented by the certificate.
- E. Satisfactory means of identifying the consignment.
- F. Statement that the material meets the pertinent specification required by the Contract.
- G. Signature of a person having legal authority to bind the supplier.

Progress estimates will not be issued until these requirements have been fulfilled.

Materials or assemblies used on the basis of Certificates of Compliance may be sampled and tested at any time, and if found not to be in conformity with Contract requirements will be subject to rejection whether in place or not.

In the case of small quantities of material where the value is less than \$5,000 and the material is not directly involved with the safety of the structure or roadway, the Engineer may waive the certificate requirement, and may accept the material without testing.

### **106.02 LOCAL MINERAL AGGREGATE SOURCES.**

- A. **General.** Possible sources of local materials may be referenced and described in the Proposal. The Contractor is under no obligation to use any of these sources.

Aggregate sources controlled by the Department may only be used if referenced in the Contract. If the Contractor wishes to use a different state controlled pit, the Contractor shall request that the Department make the pit available prior to the bid opening. These requests will be considered by the Materials and Research Engineer; if approved, all prospective bidders will be notified.

The Proposal generally shows the percentage of material passing each of several sieves, percent shale, and other items. Each of these values is derived from an analysis of the boring logs using accepted standard practices. The values are based on the samples tested from the exact locations shown. No interpretation is made or intended by the Department. Any interpretation must be based on the judgment of the person examining the information.

The water tables shown on the boring logs change with the seasons and the quantity of recoverable material may change.

It is understood that it is not feasible to determine from samples the quantity or quality of an entire deposit, and that variations shall be considered as usual and are to be expected.

The Contractor shall determine the amount of equipment, processing, blending, and all other operations required to produce specification material.

In the use of Department-owned or optioned pits, the Contractor shall fulfill all obligations imposed on the Department under the Department's options or agreements.

The pit shall be worked to conserve the available aggregate. Every effort shall be made to exhaust the portion of the pit being worked to eliminate the need to cover

any unused material. All topsoil, up to a maximum depth of one foot, or as specified in the pit plat, shall be removed and stockpiled separately from the remaining stripping. After the aggregate material has been removed, the stockpiled excavated overburden and topsoil material shall be replaced within the open pit area. The topsoil shall then be uniformly distributed and smoothly graded over the entire disturbed area leaving the pit sides as flat as possible.

When the pit operation is completed and the area is restored, the pit shall be inspected by the owner, Contractor, and the Engineer. If the pit is found acceptable, a signed standard pit release form shall be obtained from the owner.

Local governing bodies having jurisdiction may have zoning ordinances affecting removal of sand and gravel. The Contractor shall check with local authorities to obtain information on these ordinances prior to bidding a Project.

- B. State Optioned Deposits.** The Department may acquire an option and may assign the right to take materials from the sources described in the Proposal. The Contractor shall notify the landowner in writing that the Contractor is exercising the Department's option to purchase materials under the terms and conditions provided in the option and any other terms and conditions which might be negotiated and agreed to between the Contractor and the landowner. The Contractor shall ensure that the agreement to acquire materials from the landowner complies with the requirements of Chapter 38-16 of the North Dakota Century Code. A copy of the written notification to exercise the Department's option, and any other agreement negotiated between the Contractor and the landowner regarding use of Department optioned pits, must be provided to the Engineer before the Contractor moves into the pit. Material (other than reject material owned by the Contractor) from Department optioned pits will only be used on Projects where the pit is referenced for use in the Proposal, unless otherwise approved by the Materials and Research Engineer in writing.

Before moving into an optioned pit, the Contractor shall contact the Engineer and the property owner or the owner's agent and inform them of the intended removal process and the proposed cartway location. An approximate date of payment for the material used shall be agreed upon by the Contractor, pit owner, and Engineer.

All material processed in the crushing or screening operation (accepted or rejected) that remains at the pit site after completion of the pit operation shall be paid for by the Contractor, to the pit owner, at the applicable royalty. The Contractor shall have 180 days, or as shown on the pit list, after completion of the pit operation to remove the processed material from the pit site. (Time will be counted from the date the Contractor and the owner are notified, by the Engineer, of the amount of processed and rejected material). If the material is not removed within this time, ownership shall revert back to the pit owner, unless a storage fee is paid as outlined in the Department's material option agreement. If the Contractor does not wish to keep the material, the Contractor shall make arrangements with the owner to satisfactorily dispose of the material.

The royalty payment shown in the pit list for the material includes consideration for the use of a reasonable area adjacent to the pit, for stockpiling of stripping, wasting material, plant site (not to exceed 8 acres), and for the use of a cartway 50 feet wide for ingress and egress to the pit.

The Engineer will determine the total amount of all processed or rejected material and the payment due the pit owner. The Contractor and the pit owner will be noti-

fied of this information in writing. Upon receipt of this information, the Contractor shall make payment to the pit owner according to the terms of the agreement.

- C. **State Owned Deposits.** Department owned aggregate sources will be referenced in the Proposal. Material from the Department owned deposits will only be used on Projects where the pit is referenced for use in the Proposal, unless otherwise approved by the Materials and Research Engineer. If the Department allows the Contractor to use this material for work on other than Department Projects, a fair market royalty will be charged to the Contractor. This royalty will be determined by the Department and may be different than the royalty charged for the Project.

A royalty will be charged for all aggregate taken from the pit and incorporated into the project. The royalty will be listed in the proposal for each class of aggregate used on the project. If a class of aggregate is needed that is not listed in the proposal, the Department will determine a fair market royalty and add it to the Contract Unit Price by Change Order. All material remaining at the completion of the Project, including reject material, will be the property of the Department and shall be buried at the Contractor's expense before reclaiming the pit site.

The Contractor shall be liable for any crop damage which occurs in a Department owned pit. Before moving into a Department owned pit, the Contractor shall consult with the Department's District Engineer. Department owned pits shall be operated in a manner and left in a condition satisfactory to the District Engineer.

- D. **Private Owned Deposits.** Any information issued by the Department for privately-owned pits is for use by all Bidders on an equal competitive basis. Bidders shall not acquire such private pits for their exclusive use.

If material is obtained from other than Department owned or optioned sources, the Contractor shall acquire the necessary rights to these materials and pay all related costs. All costs of exploring and developing other sources shall be at the Contractor's expense.

### **106.03 SAMPLES, TESTS, CITED SPECIFICATIONS.**

All materials will be approved by the Engineer before incorporation in the work. Materials found to be unacceptable will not be paid for and shall be removed at the Contractor's expense. Tests according to cited Specifications will be made by and at the expense of the Department. All materials being used are subject to inspection, test, or rejection at any time before or during incorporation into the work. Copies of all tests will be furnished to the Contractor's representative on request.

### **106.04 STORAGE OF MATERIALS.**

Materials shall be stored to preserve their quality and fitness for the work. Stored materials will be subject to inspection and retesting before use in the work. Stored materials shall be located to allow their prompt inspection. Approved portions of Right of Way may be used for storage purposes and for placing the Contractor's plant and equipment. Any additional space required must be provided by the Contractor. Private property shall not be used for material storage without written permission of the owner or lessee; and if requested, copies of written permission shall be furnished to the Engineer. Storage sites shall be restored to their original condition by and at the Contractor's expense, unless exceptions are specifically outlined in the written permission document.

**106.05 HANDLING MATERIALS.**

Materials shall be handled to preserve their quality and fitness for the work. Aggregates shall be transported in vehicles constructed to prevent loss or segregation of materials after loading and measuring.

**106.06 STOCKPILING AGGREGATE AND SALVAGED MATERIALS.**

Stockpile sites shall be cleared and grubbed before stockpiling material. Sites shall be firm, smooth, and well drained. A bed of aggregate shall be maintained under the stockpile to prevent contaminating of stockpiled material with soil or foreign matter.

The material shall be stockpiled to prevent segregation. Equipment or methods that cause segregation, degradation, or contamination of the aggregate shall not be used in constructing stockpiles or delivering materials. Material with segregation or contamination shall not be incorporated into the Project.

The intermingling of aggregate from adjacent stockpiles of different types or sizes shall be prevented.

Salvaged bituminous material that is milled or has been crushed shall not be stockpiled higher than 15 feet. Equipment will not be permitted on top of the salvaged bituminous stockpiles.

**106.07 RIGHTS IN AND USE OF MATERIAL FOUND IN THE WORK.**

The Engineer may authorize the use of materials found in the excavation that are suitable for bid items other than excavation. The Contractor will be paid for both the excavation of the material at the corresponding Contract Unit Price and for the pay item for which the excavated material is used. The removed material shall be replaced with acceptable material at the Contractor's expense. No charge for the materials used will be made against the Contractor.

Material from within the highway Right of Way which is not within the construction limits shall not be removed without written authorization from the Engineer. If payment by the Contractor is required for material deposits found outside the construction limits on the Right of Way and used in the work, it shall be at a price agreed upon by both parties before removal commences. The Contractor shall restore the area from which the material was removed to a condition satisfactory to the Engineer.

Material from any existing structure designated for removal may be used temporarily in the erection of the new structure. Such material shall not be cut or damaged without the approval of the Engineer.

**106.08 DEPARTMENT-FURNISHED MATERIAL.**

Material designated to be furnished by the Department will be delivered or made available at locations specified in the Contract. The cost of handling and placing Department-furnished materials shall be included in the Contract Bid Price for the item which they are used.

The Contractor shall be responsible for materials delivered. Deductions will be made from any monies due for any shortages, deficiencies, and damage that may occur to the

material after delivery. Demurrage charges, resulting from the failure to accept the material at the designated time and point of delivery will be deducted from monies due the Contractor.

### **106.09 BUY AMERICAN PRODUCTS.**

All steel or iron materials permanently incorporated into the work shall be of Domestic Origin and all manufacturing processes, including applications of coatings, must occur in the United States. For this purpose the United States is defined as any of the 50 states, the District of Columbia, Puerto Rico, and other territories and possessions of the United States of America. A coating includes all processes which protect or enhance the value of the material to which the coating is applied. The manufacturer shall include a statement on a certification that the steel and iron products are of domestic origin.

Steel and iron products produced and manufactured outside the United States, as defined above, may be incorporated into the work if these items constitute less than 0.1% of the total Contract cost, or \$2,500, whichever is greater.

Pig iron and processed, pelletized, and reduced iron ore produced outside the United States may be used in the domestic manufacturing process for iron and steel materials as long as all manufacturing processes for these materials, including the application of coatings, occur in the United States.

### **106.10 CONVICT LABOR.**

Materials produced after July 1, 1991, by convict labor may only be incorporated in a federal aid highway construction project if such materials have been:

- A. Produced by convicts who are on parole, supervised release, or probation from a prison or,
- B. Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in federal aid highway construction does not exceed the amount of such materials produced in such facilities for use in federal aid highway construction during the 12-month period ending July 1, 1987.

A qualified prison facility is any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in federal aid highway construction projects.

### **106.11 QUALIFIED LABORATORIES AND TESTING PERSONNEL.**

For all projects on the National Highway System or the Interstate System, testing equipment and testing personnel are required to be qualified. The qualified test equipment shall meet the requirements set forth in the NDDOT Qualified Laboratory Program. The qualified testing personnel shall meet the requirements of the NDDOT Transportation Technician Qualification Program (TTQP). This program is administered by the Materials and Research Division and the District Materials Coordinators. All testing performed by Contractor, private testing laboratories, or consultant technicians for acceptance purposes must meet these requirements.