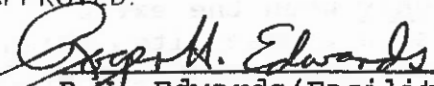


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| TO: Director, Preliminary Plan Review Bureau SUPERSEDED BY EI 78-005 EFFECTIVE 1/17/1978 | <h2 style="text-align: center;">ENGINEERING INSTRUCTION</h2> <p style="text-align: center;">NEW YORK STATE DEPARTMENT OF TRANSPORTATION</p> SUBJECT: MODIFYING CUT SLOPES AND OTHER MEANS OF OBTAINING BORROW Subject Code: 7.26-2-9.00 |
| Distribution: <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special | Code: <u>EI 74-92</u> |
| APPROVED:  R.H. Edwards (Facilities), J. Sternbach (Construction) | Date: <u>10/3/74</u> Supersedes: EI 74-79 |

Ecological, aesthetic, and economic consideration often make it desirable to allow a Contractor to flatten cut slopes, laterally move cut slopes beyond the design slopes, or borrow within the R.O.W. limits and utilize such material on the project or for the construction of other projects. To ensure uniformity in administering this matter throughout the State, the following Design and Construction Procedures are to be implemented immediately. PLEASE NOTE THAT THE FOLLOWING PROCEDURES ARE NOT APPLICABLE IN SITUATIONS WHERE THE STATE DETERMINES THAT DESIGN MODIFICATIONS OF PROJECT CONTOURS ARE NECESSARY. SUCH CORRECTIONS ARE ORDERED BY THE STATE WITH PAYMENT PROVIDED UNDER THE APPROPRIATE CONTRACT ITEMS.

The following procedure provides proper reimbursement to the State as owner of the material, and ensures that competitive bid conditions are maintained to the fullest extent possible.

I Design

Where it is feasible to obtain material on the project suitable for use on or off the project, the designer should designate specific locations where the State will allow the Contractor to excavate material beyond the design cut slopes and the extent of excavation permissible.

Appropriate notes should indicate that no payment for such additional excavation will be made under the unclassified excavation item (except as borrow under an item that is paid for in its original position; examples are Items 203.01, 203.05), that no royalty will be required for the material and that all additional expense related to the extra excavation operation (such as larger seeding area) shall be borne by the Contractor. When the material is used on the project, payment for the material will be made under the item for which it is being used. If rock cut slopes are considered for flattening, the Soil Mechanics Bureau must be first consulted.

The following Special Note is to be inserted in project proposals when the designer specifies allowable borrow locations on a project:

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 REVIEWED
 ACCEPTED DESIGN SUBMISSION

OCT 15 1974

CIRC. 157a (4/73)
 FILE DESIGN

SPECIAL NOTE - Obtaining Borrow By Modifying Cut Slopes

Within the following station limits, the Contractor, at his option, may modify the cut slopes to obtain construction material for this project or for other locations subject

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to the conditions stated in this Special Note, elsewhere in the proposal, and on the plans.

(Describe all details of modification for particular project)

A royalty will not be required from the Contractor by the State for material obtained from these areas. Payment will be made for such additional excavation beyond the design slope only when the extra material qualifies and is utilized as borrow for a project item which is paid for in its original position. No payment for excavation will be made when the material is used for an item paid for in its final compacted position. In this case, the material will be paid for under the item for which it is used. Any additional seeding, mulching, fencing, slope drains, or other items, shall be borne by the Contractor.

II Construction

The Regional Director may approve the modification of cut slopes and other means of obtaining borrow, which is not part of the contract, so long as proper provisions are made to prevent unsafe conditions, damage, and nuisances to property, wildlife areas, and haul routes within and without the contract limits. Such approval may be granted only after review of a written proposal by the Contractor showing the final deposition of the material, the haul route, hauling hours, and provisions necessary to comply with the above. Should unanticipated conditions arise resulting in any unsatisfactory situation, the Engineer shall immediately rescind the approval pending satisfactory correction.

The following procedure shall apply to areas within the R.O.W. limits not designated in a Special Note where the Contractor requests and is granted permission to modify slopes to obtain material for use on State contract work only. The Contractor will be required to reimburse the State with a rebate for the material obtained in these areas. Permission will not be granted to excavate material beyond the design slopes if it is to be used on other than State contract work.

The rebate to be obtained from the Contractor for this material is comprised of 1) A royalty based on the actual value of the excavated material, and 2) A credit for the difference in the contractor's handling costs if these handling costs have been reduced. The royalty which is to be obtained for the excavated material shall be appropriate for the item for which it is to be utilized and shall be comparable to the current price being paid to purchase similar material in the area.

If the Contractor's handling costs associated with obtaining material from within the R.O.W. limits are greater than those for obtaining material from other acceptable sources, these additional handling costs must be borne by the Contractor. The royalty shall not be reduced to offset any increased handling costs incurred by the Contractor.

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If the Contractor's handling costs associated with obtaining materials from within the R.O.W. limits are less than those for obtaining material from other acceptable sources, the difference shall be reimbursed to the State as a credit in addition to the royalty.

The difference in the Contractor's handling cost shall be determined by an analysis based on a comparison of haul lengths, hauling equipment, hauling operation, use of haul roads or public highways, preparation and restoration of the borrow areas, and any other variables involved.

Prior to modifying rock cut slopes, the Soil Mechanics Bureau must be consulted. If rock cut slopes are flattened sufficiently to eliminate the need for presplitting, an additional rebate will be necessary.

All special requirements to be fulfilled by the Contractor, at his expense, shall be clearly stated in the agreement. The foregoing requirement of receiving a rebate from the Contractor for material obtained by modification of slopes shall apply only to locations not designated in the Contract Documents.

Modification of cut slopes resulting in the top of slope falling outside the State's R.O.W. will not be permitted without specific authorization of the Regional Director.

All the requirements of Section 107-10, Restoration of Disturbed Areas Outside the Right of Way, and Section 107-11, Restoration of Disturbed Areas within the Right of Way, in the 1973 Specifications shall also apply.

The foregoing agreements, under Section II, relative to rebates and royalties for the use of additional excavated material require approval via orders-on-contract prior to implementation.