

**SUPERSEDED BY EB 81-025
EFFECTIVE 6/17/81**

ENGINEERING INSTRUCTION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

**SUBJECT: PARTIAL PAYMENT FOR STORED MATERIALS
CERTIFICATION OF TITLE**

Subject Code: 7.30

Distribution:

Main Office

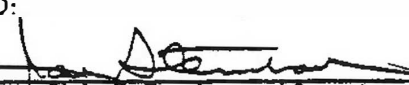
Regions

Special

Code: EI 79-43

Date: 10/26/79

APPROVED:


Deputy Chief Engineer (Construction Subdivision)

Supersedes:

EI 79-16

Related Engineering Instructions:
EI 75-86 and EI 75-91

PRELIMINARY PLAN REVIEW
BUREAU

NOV 1 1979

This Instruction incorporates previously issued EI 79-16 and provides additional clarification of the rules governing the use of a Certification of Title in making Partial Payments.

Commencing with the July 12, 1979 letting, Subsection 109-04 of the Specifications was amended to allow the Contractor to submit the attached executed Certification of Title in lieu of a receipted paid bill or bills of sale or invoice showing that the Contractor has title to the materials for which partial payment is requested.

All Engineers-in-Charge are hereby instructed to accept a properly executed Certification of Title as documentation of ownership for any partial payment made after the above date. Vendor's invoices or bills of sale, which need not be receipted as paid, are still required to be submitted to establish the price for materials to be paid for by the State.

Attached for your information is a copy of Certification of Title form and the revised Subsection 109-04 Partial Payments. The Certification of Title form may be reproduced for use pending formal printing and distribution.

FACILITY	

ATTACHMENT

CERTIFICATION OF TITLE
TO MATERIALS STORED OR TO BE STORED
FOR INCORPORATION IN DEPARTMENT OF
TRANSPORTATION PROJECT

WHEREAS, _____, hereinafter referred to as the "Contractor", is engaged in the performance of a certain construction contract with the State of New York, Department of Transportation, hereinafter referred to as the "Department", designated as

Contract No. _____

WHEREAS, the Contractor has purchased from _____, hereinafter referred to as the "Vendor", for incorporation in Contract No. _____, in accordance with the plans and specifications therefor, or as ordered by the Department Engineer-in-Charge, and has stockpiled or stored, or intends to stockpile or store certain materials at the contract site, or at a place and in a manner approved by the Department's Regional Director, namely, the following materials:

D E S C R I P T I O N of materials and quantities

and,

WHEREAS, to comply with the provisions of the Department's Specifications (Subsection 109-04) requiring certification of the Contractor's absolute legal title to the materials hereinabove described before the Department can pay the Contractor for the actual cost thereof, the Contractor and the Vendor have entered into the following agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises, the Contractor and the Vendor agree, with the intention of being legally bound hereby, as follows:

1. The Vendor has executed this document for the purpose of acknowledging that the Vendor has made an outright sale and transfer of title of the above-described materials lawfully owned by the Vendor to the Contractor free of all restrictions, Uniform Commercial Code or other filings, or liens and does not have any interest of any kind in the said products, has the right to make such transfer of title, and will not in the future make any claim whatsoever to such title.

2. The Contractor certifies and represents that he is the lawful holder of the absolute legal title to the above-described materials and has the full legal right, power and authority to sell and transfer title to the same without restriction, Uniform Commercial Code or other filings, or liens of any kind on the part of the Vendor and/or any Subcontractor.

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3. The Contractor and/or any Subcontractor and the Vendor, their successors and assigns, will and do by these presents, warrant the title to the above-described materials to the Department.

4. In the event the Vendor has furnished or sold the above-described materials, or transferred title to such materials to a Subcontractor of the Contractor rather than directly to the Contractor, this Certification of Title is hereby amended at all applicable points to reflect this fact. By the execution of this Certification by any such Subcontractor, such Subcontractor is executing this document for the purpose of acknowledging that such Subcontractor has made to the Contractor an outright sale and transfer of title which it may have to the above-described materials as it may be lawfully owned by the Subcontractor free of all restrictions, Uniform Commercial Code or other filings, or liens and does not have any interest of any kind in the said products, has the right to make such transfer of title, and will not in the future make any claim whatsoever to such title.

IN WITNESS WHEREOF, the parties hereto have caused this Certification of Title to be executed this _____ day of _____, 19____.

ATTEST:

CONTRACTOR

By _____

Title _____

ATTEST:

SUBCONTRACTOR

By _____

Title _____

ATTEST:

VENDOR

By _____

Title _____

SUBSECTION 109-04 PARTIAL PAYMENTS

Payment of the actual cost of the materials mentioned in the following list may, upon application by a Contractor and a favorable recommendation of such application by the Regional Director and approval thereof by the Deputy Chief Engineer, Construction, be made to the Contractor prior to the incorporation of any such materials in the work, provided the amount of the partial payment requested for each item is greater than five hundred dollars (\$500.00) and the Contractor shall first file with the State Department of Transportation a bill or bills of sale showing that the materials have been paid for and that title to the materials, without encumbrances, is in the name of the Contractor or in lieu of such bill or bills of sale a duly executed Certification of Title executed by the Contractor and the Vendor. Such payment may be made when said materials are delivered and are properly stored, provided that the materials upon which such payment is to be made shall be stored at the site of the work or at a place and in a manner approved by the Regional Director of the Department of Transportation. No payment shall be made on any materials without documented evidence of the acceptability of such materials filed with the Engineer. Such payment shall not be deemed to be an acceptance of such materials, and the Contractor shall be responsible for and must deliver to the site and properly incorporate in the work only those materials that comply with the specifications.
