



## CHAPTER 33

# MATERIALS LEFT OVER OR PRODUCED FOR A THIRD PARTY

### 33-1 Materials Left Over

Subsection 00195.80 addresses Materials that have been ordered or produced, but are left unused due to changes in the Contract.

As stated in Chapter 23 - Quantities of Materials to Be Produced, both the Resident Engineer (RE) and the Contractor must independently verify the quantity of Materials that will be needed to perform the Project Work.

The Contractor should anticipate a reasonable fluctuation in Project quantities due to variations in specific gravities, variations in normal production, and construction. The Agency is not responsible for purchasing left over Materials due to these fluctuations.

#### A. Purchasing Left Over Materials

Regarding left over Materials due to changes in the Contract, the Agency may deal with those materials through one of the following actions:

1. **Restocking Left Over Materials** - Have the Contractor or Supplier retain and restock the Material. (Restocking charges may not be FHWA reimbursable, If you have questions, contact the Contract Administration Unit for guidance.)

Pay any restocking charges incurred by the Contractor, plus 5% overhead allowance, minus any allowances made for Materials on Hand (MOH). There should be no markup or profit.

This is generally the preferred method, unless the Agency has use for the Material. This must be done with a Contract Change Order (CCO). If any allowance has been paid under MOH, the MOH payment must be zeroed out and added to the CCO.

- 2. Purchase of Left Over Materials** – The Agency may purchase the left over Material at cost plus 5% overhead allowance, minus any allowances made for MOH, and with no markup or profit as specified in Subsection 00195.80. Typically, such purchases will be born by the Agency and are not considered to be FHWA participating. The Resident Engineer (RE) will need to issue a CCO to purchase left over Materials. Do not pay for left over Materials as a 6000 series price adjustment. If any allowance has been paid under MOH, the MOH payment must be zeroed out and added to the CCO.

The CCO must document that all of the following conditions required by 00195.80(b)(2) have been met:

- The Contractor requests the Agency's purchase of unused Materials.
- The Contractor shows acquisition of the Materials according to 00160.10.
- The Contractor shows that the Materials meet Specifications.
- The Contractor provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points.

If there are no state or local agency funds in the Contract, and if FHWA will not participate in the purchase of left over Materials, the RE will need to add the non-federal or Highway Maintenance funds to the Contract. The RE will need to work with the Highway Program Office (Transportation Program Office) to establish a new subjob for the non-federal or Maintenance funds. The RE will need to use this new subjob on the CCO for the purchase of the left over Materials. This will allow the costs for the Materials purchased to be made using whichever non-federal funds are appropriate.

### **B. Disposition of Purchased Left Over Materials**

If the Agency must purchase the Material, the RE must dispose of the Materials in one of the following methods:

1. **Hazardous Materials** - If the Materials require special handling and disposal, or are classified as hazardous Materials, the RE should arrange for and pay the Contractor to properly dispose of the Materials.
2. **Give the Material to ODOT Maintenance** - The RE should work with the District Manager to resolve any transportation and storage issues.

### **33-2 Materials Produced for a Third Party**

When Materials are produced under the Contract for Maintenance or another third party, Maintenance or the third party must reimburse the Project for the cost of the Materials and other costs (such as engineering and mobilization) attributable to the production of the Materials.

When the production of the Materials is complete, and the Materials are available to Maintenance or the third party, the RE must:

1. Calculate the quantities and value of the Materials, including the cost of engineering, mobilization, and other appropriate costs.
2. If the Material is to be transferred to Maintenance, convey the information on quantities and value to the District Manager. Assure that costs are credited to the Project through a Journal Entry or the CPS System.
3. If the Material is to be transferred to a third party, convey the information on quantities and value to the appropriate third party person. Assure that the Project is paid or credited for the cost of Material.

The RE must assure:

- That ownership of the Material is transferred to the appropriate party.
- That the Project has been credited for the value and other costs associated with the Material.
- That FHWA participation has not been requested for the value or other costs associated with the Material, unless FHWA agrees to participate in the cost.

Excess Material should be stored or placed on property that is under Agency control or on property controlled by the appropriate third party. If the Material cannot be stored on Agency-controlled property, or that of the appropriate third party, the Material must be stored properly and in a manner that provides access to the Agency or the appropriate third party in order to remove the Material.

