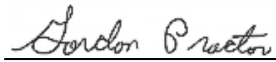


Approved:

  
Gordon Proctor, Director

Policy: 27-009(P)  
Effective Date: April 1, 2006  
Responsible Office: Division of  
Construction Management  
Supersedes policy dated: 4/22/2003

## **ACCEPTANCE OF NONSPECIFICATION MATERIAL ON CONSTRUCTION PROJECTS**

### **POLICY STATEMENT:**

When a contractor inadvertently incorporates into a construction project material that is later determined not to meet the contract specifications, it is the policy of the Department to determine if such material will serve the intended purpose of the specified material. If it does, the Department may allow it to remain in place and accept it at a reduced price. The District Construction Engineer will make these determinations. If the material is allowed to remain in place, the District Construction Engineer will determine a price deduction that will reflect both the fair market value of the in-place material and adequate compensation to the Department for its incurred administrative costs and the cost of any additional testing associated with accepting the material.

The Department will establish a consistent method for determining fair market values and establish an administrative process that permits contractors to appeal a District Construction Engineer determination to the Division of Construction Management.

The Division of Construction Management will create a Central Office Review Committee to review and decide a Contractor's appeal. The decision of the Central Office Review Committee is the final administrative action in the Department.

### **AUTHORITY**

"Construction and Material Specifications." 1997, 2002, 2005 editions Section 105.03.

### **REFERENCES:**

Standard Procedure 510-009(SP) Acceptance of Non-specification Material on Construction Projects.

**SCOPE:**

This policy is for the use of District Construction Engineers and the Division of Construction Management.

**BACKGROUND:**

The Ohio Attorney General, Hugh S. Jenkins, issued opinion 1047 on June 27, 1946, stating that the State may accept non-specification material incorporated into a highway project provided it will perform the intended purpose of the specified material and there was no element of fraud or intentional breach of contract on the part of the Contractor and the State pays no more than the fair market value of the incorporated material. Under a succession of various policies and procedures since 1946, the Department followed this Attorney General Opinion to resolve most issues of non-specification materials. This policy supersedes the last in this series Policy 512-005(P) Dated August 31, 1998, Acceptance of Non-specification Materials.

**TRAINING:**

This policy does not require any training of the District Construction Engineers. The Office of Construction will advise the various District Construction Engineers on any policy or procedure question.

**FISCAL ANALYSIS:**

This policy will not have any fiscal impact to the Department.