



Public Service Commission

State of North Dakota

COMMISSIONERS

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September 2, 2010

Mr. Lee Barron
Smith Contracting, Inc.
3941 Wynne Avenue
Butte, MT 59701

RE: August 25, 2010, Change Order Request for the 2010 Buechler/Velva AML Project

Dear Mr. Barron:

Please be informed that your August 25th request for a change order for a major increase in two per unit prices under Contract AM-588-10 for the 2010 Buechler/Velva Project is denied. The principal reasons for denial are as follows:

1. No valid basis for a change order was presented in your request. A change order cannot be issued in order to increase the contractors profit or convert a loss to a profit. A contractor who has underestimated his bid or encountered unanticipated expense or inefficiencies may not use a change order as an excuse to reform the contract or shift his own risks or losses to the Commission.
2. This request would increase the total contract amount from \$1,225,500 to \$2,953,500. It would be higher than the bids of all nine contractors who submitted bids for this project. Approval of this request would be unfair to the other bidders and would not be in the best interests of the Commission.
3. Allegations in your memo dated August 4th and during the August 20th meeting regarding unfavorable weather conditions and soil materials at this site are unsupported. Although rainfall in May and June was much higher than usual, the weather in July and most of August was remarkably dry. Recent soil analyses have indicated that the soils at this site are not unusual for AML project sites in North Dakota. The enclosed soil analyses show the soils at this site are sandy lean clay and lean clay with sand, with soil moisture percentages of 18.6 and 6.4. Our observations indicated no extraordinary problems in loading and hauling the mine spoil materials at this site.

Lee Barron
September 2, 2010
Page 2 of 2

We believe that most of the project difficulties are because Smith's bid was too low, you have not mobilized adequate and appropriate equipment, and operations have been inefficient. Smith Contracting needs to mobilize the additional equipment proposed in your August 25th correspondence and follow the revised schedule that was attached to that correspondence without any increases to the per unit pay rates that were bid. The project needs to be finished by the end of October.

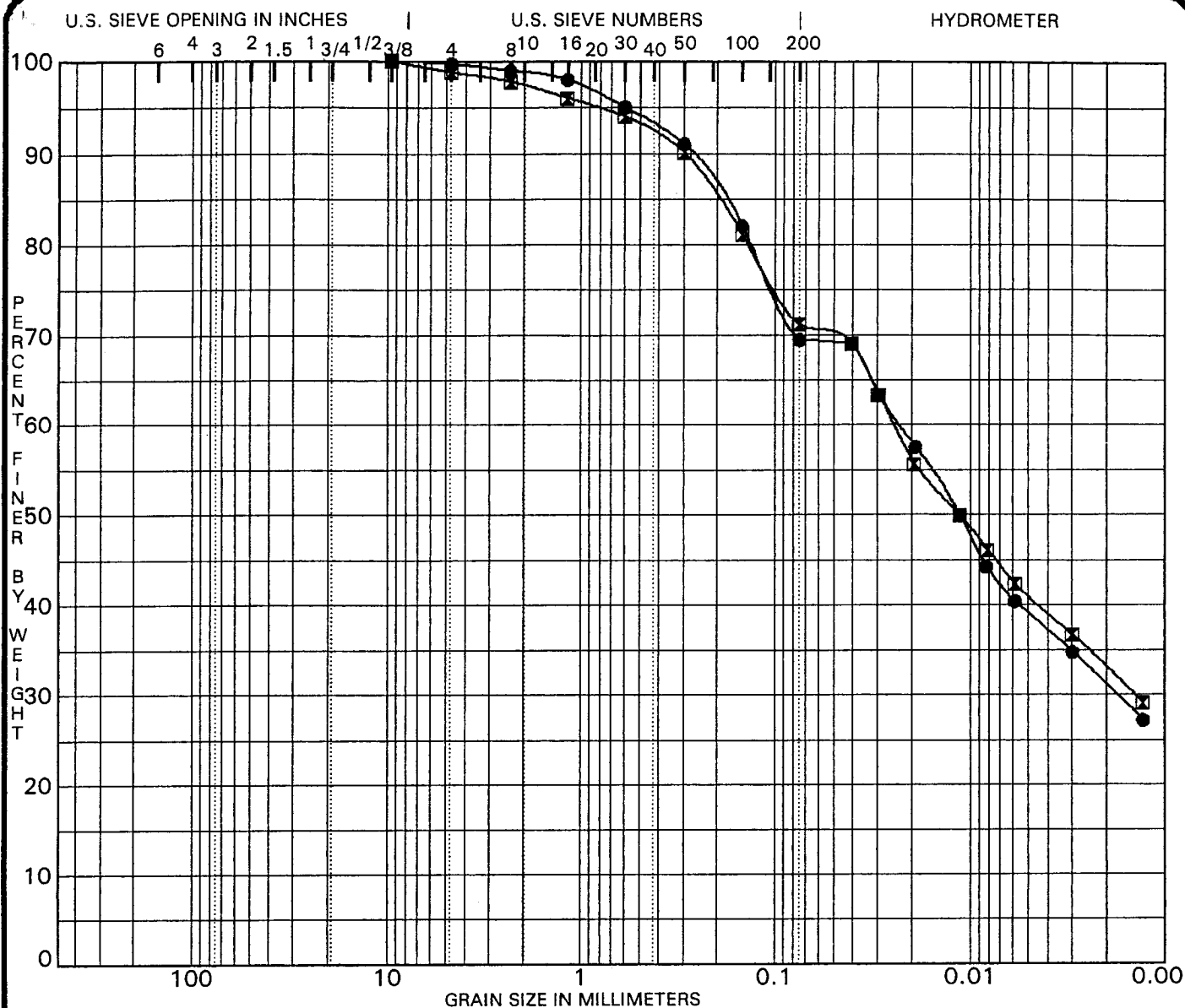
Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Deutsch".

James R. Deutsch
Director, AML Division

Enclosure

m\AML\2010\Buechler-Velva\Smith_rsp_ltr_9-2-10



MATERIAL TESTING SERVICES, LLC

P.O. Box 634
Minot, ND 58702
(701) 852-5553

PARTICLE SIZE ANALYSIS

P.O. Box 1093
Williston, ND 58802
(701) 572-4226

PROJECT: BUECHLER/VELVA

DATE: 26-Aug-10

REPORTED TO: AML Division
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, North Dakota 58505-0480

COPIES TO:

Laboratory Number 10-277

SAMPLE IDENTIFICATION:	1	2
	side of cut, area 13 south	top, area 13 north
DATE SUBMITTED:	8/23/2010	8/23/2010
MECHANICAL ANALYSIS (ASTM D 422, D 1140): passing 2"		
1 1/2"		
3/4"		
3/8"	100.0	100.0
# 4	99.7	98.8
# 8	99.0	97.8
# 16	97.6	96.3
# 30	95.1	94.0
# 50	90.8	89.8
# 100	81.9	81.2
# 200	69.4	71.1
% MOISTURE (ASTM D 2216)	18.6	6.4

REMARKS: The samples were submitted by the contractor on the dates shown.

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Material Testing Services, LLC

by 