



Note: many of the forms listed in this procedure are available as MS Word documents on the internet. Click here (<http://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx>) and look under "Plans and projects." Forms [DT1547](#), [DT1584](#) and [DT1786](#) are used by WisDOT staff only and are available on the dotnet.

The agreement stage involves the preparation and submittal of an agreement for reimbursement to the owner for compensable work. It may also involve the preparation and processing of a permit application and/or a public interest finding for the utility to subcontract part of the work.

## 1.1 Definition of an Agreement

Upon completion of investigation and design activities, the utility company submits an agreement to WisDOT for review and approval. The purpose of any agreement is to present an assembly of documents that clearly portrays the intent of the contracting parties. It should cover the anticipated situation in adequate detail so that any needed modification may be handled by normal change order procedures without requiring extensive renegotiation. In general, an agreement submittal will consist of the contract, plans, estimates, special provisions, and usually an instrument of conveyance of utility land interests. The content of the package submitted will vary with the complexities of the project.

## 1.2 Accelerated Approval

Utility work under an agreement cannot be undertaken until department approval has been secured. If accelerated approval of an agreement is needed, a written request by the utility, accompanied with plans and estimates, shall be submitted to the region. The region shall inform the utility of the department's decision following contact with the Acquisition & Services Section. The region shall forward written confirmation of the decision to the utility and provide the Acquisition & Services Section with a memorandum documenting region-central office discussion of the project, the benefits of the advanced agreement and the decision of the department.

## 1.3 Types of Contracts For Work By Utility Forces

The type of contract document to be used for a compensable utility relocation is generally decided by the region after preliminary contact with the utility. This first contact with the utility representative consists of a joint review of necessary alteration work for which reimbursements will be recommended as a right-of-way consideration.

### 1.3.1 Audit Type Contracts

Under this arrangement the state agrees to reimburse the utility for the actual net costs of the utility work as determined from personnel, equipment, and materials vouchers, and confirmed by WisDOT audit. This is the most common contract type and requires the execution of a document such as Form [DT1575](#) or Form [DT1541](#). The contract incorporates the general guidelines governing performance of the work and the reimbursement to be expected on the basis of actual costs of labor, equipment, and materials. This type of contract has evolved to cover most situations where costs may be expected to vary from the estimate. Its basic advantage is that the net reimbursement is based on actual costs determined subsequent to the work operation so that it is suitable for all types of compensable relocations. Its major disadvantages are the time and expense of the audit and the added time lapse before the contract can be closed out. Also, if an item is cited in the audit, the time to resolve the situation can be extensive. Construction record keeping must be quite detailed.

Some utilities do not keep track of actual time spent on various activities. Time is charged based on a standard hourly rate for a particular activity. That set time is then used for all estimating and billing purposes. This is similar to the time study process used to determine piecework rates in factories. In this type of system, costs are based on materials used, not the time it takes to do the work. Labor costs are averaged over the whole company on an annual basis. When this method of bookkeeping is used, the final bill will be the same as the estimate unless the scope of work changes. If a utility chooses to use this type of estimating and billing system, the Bureau of Business Services will audit the methods and procedures used to determine the rates. Once they are approved, the rates will be accepted.

### 1.3.2 Lump Sum Contracts

A lump sum contract sets forth the guidelines governing performance of the agreed upon work and includes the provision for payment of a lump sum or a single dollar amount covering the cost of all work items. Its

advantages over an audit type contract are lack of need for an audit, quick processing of bills, and ease of encumbering an exact, predetermined amount. However, more time must be spent in review of the agreement and estimate, more contract detail is required, and there may be no savings over an audit type contract. A lump sum contract is an advantage only when the work situation is clear-cut, no contingency items will be added, and there will be quick agreement on the reasonableness of the overall price.

To use this approach, it is necessary for both the department and the utility to agree to use a lump sum contract, and the utility must provide a fully detailed cost estimate that the department can accept. There should be no contingency item in the estimate. Major features in this procedure are:

1. A contract will be developed using Form [DT1542](#). The lump sum cost will include raw land value.
2. An instrument of conveyance must be supplied. The price of conveyance should be shown as "\$1.00 and other good and valuable considerations." As this document, the cost estimate, and the contract are subject to revision until fully executed, the lump sum amount should not be shown in the instrument of conveyance.
3. A greatly detailed cost estimate must be prepared without the inclusion of contingency items. Detailed plans will also be required to be submitted with the agreement proposal package.
4. A letter of transmittal briefly describing the work to be done, with region recommendation.

Lump sum contracts are not usually considered for projects where relocation costs are expected to exceed \$50,000; instead, an audit type contract is developed.

### **1.3.3 Special Type Contracts**

The exact form and provisions of the contract document may vary with the particular situation; however, the usual practice is that a contract using either Form [DT1575](#), Form [DT1541](#) or Form [DT1542](#) be used. A special contract form may be needed for large and exceptionally complex projects where unusual conditions will require out-of-the-ordinary procedures. The region should consult with the Acquisition & Services Section for assistance in preparing any special form of contract that will require extensive modification of standard forms or preparation of a completely new document form. Any special document form, must include the standard requirements found in [DT1541](#) and [DT1542](#), including equal employment opportunity and reference to the Code of Federal Regulations 23, Part 645, Subpart A - Utility Relocations, Adjustments and Reimbursement.

Form [DT1575](#) is, as its name says, an "Agreement for Payment for Relocation or Replacement of Municipal Utility Facilities Located on Publicly Held Land Required by Freeway Construction." It is used when a municipal utility is compensated for 90% of the cost to relocate or replace its facilities where freeway construction is involved and the utility is located on public way.

### **1.4 Utility Plans**

The basic purpose of the plans is to amplify and illustrate the intent of the agreement in a graphic way. As the plan constitutes one of the agreement exhibits, it must correlate with the other exhibits and particularly complement the estimate.

The plans, drawings, or sketches must clearly show the nature of the work to be done and illustrate the fact that the work is required by the highway construction.

Show all existing highway right of way and utility facilities so that the utility units of property on public and private way may be identified and compensability determined.

Show any temporary moves and the stages by which the permanent relocation is to be made. The new permanent utility and highway facilities should be illustrated and related to highway stationing.

A site plan encompassing the entire area involved in the relocation should be submitted for complex or extensive projects. It may be necessary to include more than just the immediate site area to provide information on the effect of the highway on the utility system.

Shop or standard drawings may be desirable to adequately support the proposed work.

All symbols, abbreviations, codes, or colors used on the plans must be clearly explained through the use of legends or notations on the individual plan sheets or by separate copies of a glossary or key.

Major items of material should be labeled on the plans, and it should be a relatively simple matter to locate and check them against the estimate quantities.

Sketches or drawings that are not to scale should be so identified, and the important dimensions such as length of spans, encasement, conductors, trenching, etc., should be shown.

Plan sheets should be identified as to location, project, sheet number, and parcel.

## **1.5 Cost Estimate**

### **1.5.1 General**

The purpose of an estimate is to provide a reasonably accurate determination as to the expected net cost of work by utility forces. The estimate should be prepared with sufficient detail to provide the highway personnel reviewing it with a reasonable basis for analysis. Lump sum estimates are required to be in much greater detail than those for audit type contracts. The utility company's name, the project number, parcel number, the county, and the highway should be indicated on the first page of the estimate. Any work order, folio, or other identifying numbers that the utility desires may also be shown.

The estimate should provide a concise statement of the work to be accomplished. The number of major units to be removed, replaced, or relocated should be mentioned, and the reason for incorporating any special procedures or special sizes or types of material should be given. Any unusual field conditions, such as anticipated inclement weather, rough terrain, subsurface rock ledges, swamps, or other adverse circumstances, that have influenced the estimated cost and that are not readily apparent from the utility plans should be mentioned. Contingency items when used in an audit type contract should show derivation and application.

The temporary relocation of a segment of a utility facility will require adequate support as to why it is necessary. Why the facility cannot be left permanently in the temporary location or built initially in its final location will be a matter of particular interest because of the costs involved. This information will be required before the contract can be processed.

If federal funds are participating in the project, estimates of cost must be prepared in accordance with federal requirements and any supplements, revisions or modifications issued prior to the execution of the contract. See 23 CFR Part 645.117, "Cost Development and Reimbursement." (<http://www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm>)

### **1.5.2 Right-of-Way Costs**

Right-of-way costs should, in conjunction with the plans, clearly show that replacement land interests are being acquired in like kind to the interest being conveyed for highway purposes. All charges for replacement right-of-way should be reviewed by the region for reasonableness and to ensure that no betterment will result.

### **1.5.3 Preliminary Engineering Costs**

The preliminary engineering cost data presented in the estimate should provide information as to how it was accumulated or calculated. In the event that it is an overhead, the derivation of the percentage should be shown and the base to which it applies indicated. If these costs are accumulated directly, the estimate should so indicate by use of the words "Direct Engineering Charges."

### **1.5.4 Labor Costs**

The estimated labor costs should be separated into installation, removal, and maintenance groups, or such similar groupings as may be required by the prescribed utility system of accounts. Labor hours should be shown by class and rate, with payroll additives and other overhead factors shown individually with a statement of what is included in each.

### **1.5.5 Materials and Supplies Costs**

All major items of cost to be installed should be listed and the description, number of units, unit price, and total cost provided. Minor replacement items of hardware that do not affect a betterment determination need not be listed separately but may be lumped together under the title of "Miscellaneous Hardware" or some other similar descriptive title. A minor cost item that does indicate a betterment should be listed as a separate item.

When the classification of a unit of new material affects the cost of the unit (such as pole class, cross arm length, wire size, etc.), such information must be provided. When the classification does not affect the price (as when all classes of 40-foot poles are billed at one price), information indicating that such is the case must be included and the special classification data need not be included.

The detail in which the list of new materials is presented should be adequate to allow major items to be located on and correlated with the utility plans.

## **1.6 Special Provisions**

The terms and special provisions in the agreement are included for the purpose of emphasizing the unique situations or conditions that are germane to the prosecution of the work under the contract. Reasons for special requirements should be evaluated during the early project development stages. When it is agreed that specific

modifications to the agreement are necessary to cover some part of the construction work, it is desirable to incorporate the special provisions into the document by use of the following statement:

*The following body of directives, provisions, requirements, or covenants shall be known as the Special Provisions of the Agreement to which they are hereto attached and hereof made a part, and these Special Provisions are added for the purpose of covering the work not satisfactorily or completely provided for under other parts of said Agreement and shall take precedence over other parts of said Agreement whenever they conflict with it.*

After the statement should be a list of the special provisions in adequate detail and with sufficient explanation to make clear their intent and to delineate the extent of the modification of the basic agreement.

## **1.7 Conveyance of Utility Land Interests**

### **1.7.1 Responsibility to Acquire**

The regions are charged with the responsibility of acquiring utility land interests needed for highway purposes, with assistance by the Acquisition & Services Section on projects the department is developing.

On projects where the county or municipality is responsible for furnishing right-of-way, the local agency is to negotiate directly with the utility, with review by the region and Acquisition & Services Section if federal funding is desired.

### **1.7.2 Procedure**

Acquisition of utility land interests may proceed in any of three ways:

1. Quit Claim Deed: If the utility relocates its facilities entirely from the property to be acquired, a Quit Claim deed (Form [DT1661](#)) shall be obtained unless a conveyance of rights is obtained.
2. Conveyance of Rights: If the utility facilities may remain on the property without adverse effect upon the highway use, a conveyance of right (Form [DT1660](#)) shall be obtained. If utility relocation is required, check the extent of the relocation to verify that the new alignment is within the prior easement before using this approach, because once a utility is constructed across an easement, the specific location of the easement is established even though it was originally described in general terms.
3. Jurisdictional Offer: When it is apparent that negotiations with the utility for either a deed or other release of rights document cannot be completed in time to assure the schedule for the highway work, it may be necessary to acquire by award. Under this method, a jurisdictional offer (Form [DT1786](#)) and a notice of lis pendens (Form [DT1547](#)) should be made. Also, it is necessary that legal notice be given to the utility, via Form [DT1584](#), that its interest may be acquired by the award of damages procedure.

The region must obtain the approval of the Chief of the Acquisition & Services Section prior to starting the eminent domain procedures. The Regional Utility Coordinator should be involved in developing the amount of damages to be offered to the utility. The region has approval authority for the jurisdictional offer and the notice of lis pendens.

For further information on the acquisition of utility land interests, consult the Real Estate Program Manual.

## **1.8 Review and Approval of Agreement**

1. When the utility has completed and submitted its plans, cost estimate, contract, and land interest conveyance to the region, and after the region has made its review, the following agreement package shall be sent to the Acquisition & Services Section with a recommendation:
  - Agreement, cost estimates, and utility plans - Send one copy of agreement and one copy of the estimate and plans.
  - Conveyance of land interest - Send one copy.
  - Pertinent correspondence from the utility; for example, documentation of a request to use a subcontractor.
  - Letter of transmittal - It should briefly describe what type of facilities are involved, how compensability and credits were determined and set forth all agreements or arrangements made between local units of government and utilities and other information pertinent to the prosecution of the contract.
2. Affected region sections will confer on the effects of utility construction upon the right-of-way. If a need for a permit exists, they will inform the utility and request that an application be submitted. Upon receipt of the permit application, the region utility permit coordinator will review the application, send it

to other sections, as appropriate, for their review and comments, then approve or deny the application and process it accordingly.

All applications that request installations on freeways (includes interstate) and/or would result in an exception to the approved State Utility Accommodation Policy must be sent by the region with their recommendation to the Bureau of Highway Operations for their review and approval. These applications may require FHWA approval, as well. Applications forwarded to the Bureau of Highway Operations will be approved or denied and processed there.

3. The Acquisition & Services Section reviews the agreement for acceptable engineering concepts, reasonable prices, and compliance with state and federal policy and procedure.
4. After approval by the Acquisition & Services Section, the force work is considered a part of the just compensation to be established for the utility's land interest.
5. C copies of the agreement are sent to the region and the utility (via the region).

### 1.9 Permits

Under state statute WisDOT has the responsibility to regulate the installation of transmission lines along, across, or within the limits of the State Trunk Highway System. In order to provide for regulation of transmission lines, WisDOT has developed policies and procedures and issues permits to utilities in accordance with these policies and procedures. The purpose of a permit is to define the conditions under which highway right-of-way may be occupied by a utility and the location(s) that may be occupied. Information about permit policy and procedure is printed in "the Utility Accommodation Policy" (<http://www.dot.wisconsin.gov/business/rules/property-96.htm>) which may be obtained from the Bureau of Highway Operations.

### 1.10 Subcontracting by Utility

Due to the complex or specialized nature of certain work items, the utility may not be able to feasibly perform some work operations with its own forces and equipment. Instead, they may propose to let those items to a subcontractor.

The proposal to let some of the work is approved at the time the contract for work by utility forces is approved by the department. Prior to submittal of the contract to central office, the Regional Utility Coordinator shall determine that the subcontract is in the best interests of the public, or document that the utility does not have the forces or equipment to perform the work items proposed for subcontract within the required time frame. Approval by the department of the subcontracting concept does not give approval to use of a specific subcontractor. If, however, the utility will use a subcontractor that is regularly employed for its own operations under a continuing contractual arrangement, approval by the department of the contract for work by utility forces gives approval to the concept of subcontracting and to that particular subcontractor.

After the need to sub-contract has been determined, the utility must obtain an acceptable subcontractor unless a continuing subcontractor exists. Methods used by utilities include open advertising, solicitation through use of a list of pre-qualified subcontractors, or direct negotiation.

The region shall transmit the request by the utility to use a subcontractor with the agreement package, together with all substantiating information and a recommendation for acceptance.

## FDM 18-20-5 Construction Stage

December 30, 2004

### 5.1 Work Flow

1. Upon receipt of the fully executed agreement and the approved permit, the region sends a copy of each to the utility company. The utility should be authorized to begin work as soon as possible to avoid delays to the highway improvement contract. For TRANS 220 projects, the utility must complete its work within the time frame provided in an approved work plan.
2. After the highway contract has been awarded, a formal letter is sent by the region to inform affected utility companies of the award, to whom it was made, and the date of the preconstruction conference. Small size highway plans should be sent for utility information.
3. Progress on the utility agreement is coordinated with the highway project and compensable work is inspected by the region.
4. The utility company submits invoices for payment. These are processed by the region and central office.

## 5.2 Utility Coordination Meeting

TRANS 220 also provides that upon request of a utility facility owner or its own initiative, when the department determines there is a potential for conflict between utility relocation work plans, the department will schedule a meeting that utility owners are required to attend to coordinate the work. Although this meeting would ideally occur during the early stages of utility coordination, it could occur just prior to the utility companies performing their work.

## 5.3 Construction Coordination And Inspection

The Construction and Materials Manual should be consulted on such matters as the duties and responsibilities of department personnel on utility construction projects, traffic control and safety measures, subcontracting, records, inspection of recovered materials, etc.

## 5.4 Agreement Change Order

Because a utility agreement is primarily a right-of-way concern, the processing of a change order differs from the usual format. The following procedure has been established in cooperation with the Bureau of Highway Construction.

### 5.4.1 Region Office

1. Ascertain if the utility agreement change order (UACO) is necessary (Region Utility Coordinator).
2. Prepares two copies of the UACO form ([DT1731](#)) and sends to the utility for execution and to the Region Director for recommendation.
3. Modifies the permit, as necessary.
4. Prepares three copies of the revised plans and estimates .
5. Modifies the right-of-way conveyance and sends to the utility for execution.
6. Sends an explanatory memorandum to the Design Services Section together with a signed Form [DT1731](#) and one copy of the revised plans and estimates, plus the revised permit and right-of-way conveyance, as deemed necessary, for the particular project.

### 5.4.2 Design Services Section

1. Analyzes the UACO request against the original agreement. If acceptable, approves the UACO for the DTID Administrator.
2. Returns one copy of the approved UACO to the region and informs the Bureau of Financial Services of the Change Order.

If quick action is needed, the region should call the Design Services Section and request advance verbal approval.

## FDM 18-20-10 Payment Stage

February 28, 2007

### 10.1 Work Flow

1. The utility presents two copies of the bill to the region for completed work.
2. The region reviews the bill on the basis of project completion, using the inspector's work record. One copy is transmitted to the Utility and Access Unit in the Bureau of Technical Services (BTS) with a recommendation for payment.
3. The Utility and Access Unit reviews the bill on the basis of the terms of the agreement. If acceptable, it approves payment and submits the bill to the Bureau of Business Services (BBS), Expenditure Accounting Unit.
4. The BBS verifies that funds have been encumbered and arranges for a check that is sent to either the region or directly to the utility.
5. The Bureau of State highway Programs (BSHP) will process all audit type agreements for audit. After the audit by BSHP, an adjustment, if needed, is made by BSHP on the basis of contact between the Utility and Access Unit, the region, and the utility.

### 10.2 Review of Billings by Region Office

Review of any reimbursement claim for force work is primarily the responsibility of the region, with technical assistance from the central office. In general, the region reviews the billing so they can certify that the work was

completed satisfactorily, in the agreed upon manner. The Utility and Access Unit reviews the technical aspects of the claim for adherence to the intent of the agreement. BSHP reviews company records to verify proper accounting procedures and charges.

Upon receipt of two copies of the bill submitted by the company, the appropriate region personnel will review each detailed utility agreement billing and determine the supportable amount based upon region records, supervision, and knowledge of the utility work. The bill should be checked for arithmetic correctness, the inclusion of the appropriate credits, and should be of similar form and amount of the agreement estimate. Acceptable variations from the agreement estimate should be explained. Unacceptable variations, such as contested expenditures, etc., should be deleted from the amount of the bill and an explanation provided after reasonable attempts have been made to correct the billing by contact with the utility.

After the region review has determined the correctness of the amount of the utility billing to be paid, the region will certify the following in the transmittal letter to the Design Services Section:

*Based upon our inspection of the project and our review of the final billing, we certify that the materials incorporated into the project and the construction operations performed substantially conform to the contract plans and estimates.*

The billing should contain a statement by the utility certifying that it represents actual expenditures to accomplish the agreed upon work under a specific agreement. It must also designate the state's share or obligation.

Billings for a company with a materials-based cost system will be the same as the estimate unless the scope of work changes. A bill accompanied by a statement certifying that the work was done in accordance with the estimate will not need additional documentation, because the documentation will be the same as the estimate. The utility coordinator should verify that the work was done, and process the bill for payment. If there are changes to the scope of work, these should be documented and a revised estimate should accompany the billing.

The region memorandum transmitting the original copy of the billing to the Utility and Access Unit should contain the above information and any necessary explanations and certifications, and a recommendation that 100 percent of the billed amount be paid prior to audit. The utility should be advised when given 100 percent payment prior to audit that any overpayment disclosed by audit must be refunded.

The intent of the procedure is to provide for payment of 100 percent of the billed amount that can reasonably be determined by the region to be owed to the utility under a specific agreement based upon region supervision, records, and knowledge of the job. The region may have to contact the utility on some billings to resolve certain billed items rather than to just exclude them on a unilateral basis as contested items. It is expected that the region review will be able to check engineering items such as materials, labor, equipment, salvage, etc., but will not be able to check overhead loadings, etc., which are verifiable only at the utility offices other than by comparison with the estimated amounts. The larger utilities with which the department has a continuing contractual relationship offer little risk, as any overpayments can be recovered. A very small utility that is rarely encountered or one that has a limited record keeping system may require additional conferences on its billing before a reasonable and voucherable amount may be determined.

### **10.3 Review of Billings by Bureau of Technical Services**

Review involves a desk audit, during which the billing and the estimate are compared. All variations are analyzed in light of the comments contained in the region's memorandum. If it appears that the intent of the agreement was not realized, the region is asked for an explanation of the variation. Such concerns over matters affecting the intent of the agreement must be resolved before the final billing is forwarded.

When a billing is found to be in acceptable form, it is sent to the BBS Expenditure Accounting Unit. If there is concern over the dollar amount of the billing that can best be handled through audit procedures, it should be brought to the attention of BSHP.