



## 3.3 ALTERNATE OFFERS AND CHANGES TO ORIGINAL OFFERING PRICE

### 3.3.1 Alternate Offers

Situations may arise during the acquisition process that warrants the purchase of property beyond what is needed for highway construction. Under the laws of this state, alternate purchases may be accomplished through a deed agreement or by the eminent domain process if the owner concurs. Be alert, however, for possible contaminated remnants. Even with uneconomic remnants, the department can require the owner to remediate the site before acquisition. See Chapter 9 of this manual and consult with the Bureau of Technical Services-Real Estate (BTS-RE) property management coordinator for more guidance.

#### 3.3.1.1 Uneconomic Remnants

If a partial acquisition leaves an owner with an uneconomic remnant ([s. 32.05\(3m\), Wis. Stats.](#)), the condemnor must make a written offer to acquire the remnant. A remnant is any portion of a property that remains after a partial acquisition. It becomes "uneconomic" when its size, shape or condition has substantially impaired economic viability or will be of little value to the owner after the acquisition (i.e., loss or difficulty of access, changed highest and best use, remoteness, or any other reason that will burden owner with responsibilities or expenses not commensurate with retention of the remnant). The acquisition of an uneconomic remnant is not contrary to [s. 86.255, Wis. Stats.](#) regarding lands located outside the 1/4-mile limitations of highways. WisDOT may purchase lands or interests in lands that are located on a single parcel that is completely or partially within 1/4 mile of a highway or proposed highway. This includes any uneconomic remnants. For more information regarding [s. 86.255, Wis. Stats.](#), reference the Facilities Development Manual (FDM 12-5-3). Questions relating to acquisition can be directed to the BTS-RE acquisition facilitator. The Real Estate (RE) specialist should be alert to the possibility of uneconomic remnants not previously identified by the appraiser or review appraiser. If this occurs, contact your regional RE management for appropriate action. Even if WisDOT acquires the needed right of way by Award of Damages, that owner has the right to ask that the uneconomic remnant be purchased. However, the owner must indicate in writing that they choose to have the uneconomic remnant acquired through condemnation. When a request is made to acquire a remnant, a Property Improvements/Remnant Report (RE1961) must be completed and properly executed.

#### 3.3.1.2 Economic Remnants

In presenting the approved basic offering price to the owner, the acquisition agent may find that the owner desires an alternate offer to purchase the entire property. If so, the regional supervisor should be advised. If the development of an alternate offering price is deemed to be in the best interests of the state, acquisition shall be suspended until the necessary appraisal and alternate offering price approval processes have been completed. If the basic parcel to be acquired severs the owner's property in such a way as to leave a portion of the remaining property in an "after" condition of questionable value and use, the department may acquire such remnants at the owner's request. Based on the facts involved, the department will consider such alternate acquisitions individually.

### 3.3.2 Changes to Original Offering

New offering price - used for acquisition size changes and/or changes adversely affecting remainder. If the acquisition area has changed in size or there has been a significant change in the acquisition's effect on the remainder that will have an adverse impact on the property owner, a BTS-RE review appraiser can approve a new offering price. The region shall send a letter to the owner documenting the change from the initial approved offering price. Indicate in the letter that this new offer replaces and rescinds any previous offers. The requirement to reinitiate the 60 day period for an owner to secure an independent appraisal may depend on several factors including, but not limited to, if the change was made at the request of the owner and if the change is a decrease in acres required. Include a notation in the Negotiation Diary (RE2058) to give reason and documentation for the change in offering price. The diary should indicate the original offering price and acreage and indicate the new offering price and acreage, if changed.

Administrative Revision – An Administrative Revision (RE1592) is used for changes affecting only compensation. When there has been no change to the area of acquisition or to the impact the acquisition will have on the remaining property, an increase to the original approved offering price, whether market based or non-market based, should be handled as an Administrative Revision (RE1592). All increased offers must be presented to the owner in writing by means of an Administrative Revision Letter. Indicate in your letter that this offer replaces and rescinds any previous offers they may have received. The Administrative Revision (RE1592) must contain a comparison of damages along with a brief description of the acquisition and a justification for the offer increase. Reasons for increasing an offer may include these market-based or non-market based rationale:

- Benefit of appeal, opportunity to develop/clarify case law.
- Big divergence in appraisal values.
- Compromise of integrity/fairness.
- Cost of project delays.
- Defensibility of decision.
- Discovery of new market information or evidence.
- Issues difficult to value such as access, proximity, change of grade, etc.
- Risk of appeal, consideration of potential costs/risks should parcel be litigated.
- Time lapse between initial appraisal report and award of damage.
- Unique aspects of the parcel.
- Acquisition of fixtures, if determined by the agency as part of the real property acquisition.

The acquisition agent must coordinate the purchase of any fixtures with the assigned relocation specialist to prevent duplication of payments. Generally, fixtures should not include personal property such as tools, equipment, furniture or other items that can be relocated through the relocation program. When fixtures are being acquired through an administrative revision, the acquisition agent should clearly document what is being acquired (versus relocated) in the Administrative Revision (RE1592) and the acquisition diary, and they should inform the relocation specialist of the new administrative revision offer. The acquisition agent should advise the owner that an increased offer lowers their supplemental relocation replacement payment, and the owner will not be paid to relocate the items to a replacement site; please refer to Chapter 5 for more information related to Relocation processes and procedures.

Regional managers have authority to approve administrative revisions. Analyze each situation to ensure that the decision to revise is defensible, consistent and fair. Prior to taking any official action, the acquisition agent will need to discuss their recommendation with a regional real estate manager. Upon receiving concurrence and approval for an administrative revision action, complete the administrative revision process.