

## SECTION 210 Contracts and Agreements

### 210.1 General

A contract is a written mutual agreement between two or more parties and governs the relationship between the contracting parties. Each party to the contract has certain rights and corresponding obligations to fulfill, and neither party has the right to deviate from the scope of the terms or requirements of the contract without the written consent of the other party. A contract executed between the state and the contractor for an improvement of a highway provides that the performance of the work, including furnishing of labor and materials and fulfillment of other obligations, must conform to the plans, specifications, and other contract terms and requirements.

The construction, improvement, or maintenance of state highways and local roads is accomplished by means of contracts or agreements with private contractors, counties, municipalities, and state forces.

Several different types of contracts or agreements have been developed to accomplish the work in accordance with appropriate statutes and regulations. The "Project Managers Packet" will contain a copy of contracts or agreements to be administered by the project staff and information regarding any agreements administered by others that impact the project.

The basic authority for the department to contract for work on state highways is given in Wisconsin statute 84.06 for improvement work and Wisconsin statute 84.07 for maintenance work. Wisconsin statute 84.03 provides for contracting for work on local roads in connection with expending state and federal aid.

Refer to the following sources for information on the development of projects and contracts:

SOURCES FOR INFORMATION ON THE DEVELOPMENT OF PROJECTS AND CONTRACTS	
Project/Contract Type	Source
Improvement	<a href="#">FDM 3-5</a>
State Highway Rehabilitation Maintenance (SHRM)	<a href="#">FDM Chapter 3</a> and Maintenance Manual Chapter 13
Authority for Expenditure (AFE)	<a href="#">CMM 600</a>
Transportation Economic Assistance	<a href="#">FDM 19-35</a>
Railroad Agreements	<a href="#">FDM Chapter 17</a>
Utility Agreements	<a href="#">FDM Chapter 18</a>
Policy, Negotiated Agreements	<a href="#">FDM 3-5</a>

The type of contract used to accomplish the work necessary for a particular project depends on the work type, highway system, and organization performing the work and funding programs.

The following tabulates these conditions and provides a brief overview of each type of contract:

Contract Type	Abbr.	Work Type	Hwy System	Funding Source	Funding Program	Managing Office
Let	LET	Any	Any	Fed, State, Local	Any	BPD Region - PDS
Local Force Account - Local System	LFAL	Any	Local	Fed, State, Local	Any except SHRM	BPD Region - SPO
Local Force Account - State System	LFAS	Any	State	Fed, State, Local	Operations and SHIRM	BHO Region - SPO
Authority for Expenditure	AFE	MAINT	State	State	Maintenance	BHO Region - SPO
State Force Account	SFA	IMP.	State	Fed., State	Any Fed./State	BHO Region - SPO/PDS
Transportation Facilities Economic Assistance & Development	TEA	IMP	Local	Fed, State, Local	TEA	BHO/BPD Region - SPO/PDS
Railroad Agreement	---	Any	Any	Any	Any	DTIM - BLRRH
Utility Agreement	---	Any	Any	Any	Any	BPD - Region TSS

## 210.2 Let Contracts

The competitive bidding process can contract for both highway improvement and maintenance work. Wisconsin statutes intend for competitive bidding to contract for highway improvement work, and other methods of contracting will be the exception.

Under this method of contracting, the low bidder is determined based on estimated contract quantities and unit bid prices. Compensation to the contractor is based on actual quantities of work performed and unit bid prices that become contract unit prices. A special type of let contract is provided for by Wisconsin statute 84.076, namely "Disadvantaged Business Demonstration and Training Program." The majority of the unique aspects of projects in this program are applicable to the bidding process. However, there are a few unique contract requirements the engineer should be aware of:

1. At least 25% of the total number of workers in all construction trades must be disadvantaged individuals.
2. At least 20% of the total contract amount must be subcontracted to bona fide independent disadvantaged business subcontractors.
3. Pre-apprenticeship training must be provided to disadvantaged individuals.
4. A program of management and technical assistance must be provided to disadvantaged business subcontractors.

### 210.2.1 Unbalanced Bid Analysis

1. An unbalanced bid analysis will be performed under two circumstances:
  - If the department becomes aware of an error in a quantity of an item shown in the bidding documents.
  - If an item is found to be both significant to the contract and significantly unbalanced.
2. An individual item will be considered significant to the contract if any bidder has an item included in the proposal where the difference between the total cost of the item and the estimate, expressed as a percent of the estimated total contract cost, is greater than 0.50% for contracts less than \$2,000,000 and greater than 0.25% for contracts \$2,000,000 and larger.
3. An item will be considered significantly unbalanced if the difference between the low bidder's unit price and the estimate, expressed as a percent of the estimate, is greater than +50% or is less than -75%.
4. The unbalanced bid analysis must consist of the following steps:
  - 4.1 The estimated unit price for items identified as being significantly unbalanced will be reviewed for correctness. Corrections will be made as needed and the low bidder's unit price will be reevaluated to determine if the item remains significantly unbalanced (see item #3).
  - 4.2 Quantities for items found to be significant to the contract will be checked and verified. Quantities will be determined based upon the bidding documents and the construction methodologies depicted in the plan. These quantities will be used only for the purpose of performing the Unbalanced Bid Analysis.

- 4.3 Corrected quantities for items known to be in error (see item #3) plus corrected quantities for items significant to the contract will then be multiplied times the unit price bid for each contractor and a gross sum for the contract for each bidder will be calculated.
- 4.4 A comparison of the calculated gross sum totals will be made. If the calculated gross sum for the contract low bid is found to be higher than the calculated gross sum of another bidder, the low contract bid proposal is materially unbalanced. If the calculated gross sum of the contract low bid proposal is found to be less than the calculated gross sum of all other bidders, that bid is not materially unbalanced.
- 4.5 The comparison procedure explained in 4.4 above will be repeated as necessary using the next low contract bid proposal until a contract bid that is not materially unbalanced is found.
5. If the initial contract low bid proposal is found to be not materially unbalanced, the contract will be considered for award at the bid contract amount in accordance to the standard specifications. The contract will be based upon the bid amount and the quantities shown in the bidding documents.
6. If the initial low bid contract proposal is found to be materially unbalanced it will be considered irregular and will be rejected as non-responsive as reasonable doubt exists that the bid does not represent the lowest cost to the department.
7. If the initial low bid contract proposal is found to be materially unbalanced and rejected, the department may award to the next low bid contract proposal at the bid contract amount or may elect to reject all bids and re-let. Decisions will be made in the public interest and will consider consequences of re-letting the project.

### **210.3 Negotiated Agreements - Local Force Accounts**

Highway improvement and maintenance work can be constructed by negotiating an agreement with counties and municipalities without bids. Compensation under a local force account (LFA) agreement is based on actual costs for labor, materials, incidentals, and established rental rates. LFA agreements do not provide an opportunity for profit or loss for doing the work.

Work performed by counties and municipalities on state trunk highways and local roads may be an LFA-local, LFA-state, or AFE type agreement.

Under LFA agreements, the county or municipality is authorized to purchase and furnish work materials such as culvert pipe, posts, and other similar manufactured items, but some other items may not be allowed to be purchased depending upon the circumstances of production and the quantity used. Items such as aggregates, premixed asphaltic materials, and other similar materials, when used in minor quantities necessary for associated work, may be purchased from third parties. When these items are produced exclusively for the job, or when their uses are among the major items of the contract, furnishing of these materials becomes performance of work under the agreement.

LFA agreements require the work to be performed with county or municipal forces and equipment. Agreements are negotiated only with counties or municipalities staffed, equipped, and capable of performing the required work. However, the need may occasionally arise for the limited use of an item of equipment the county or municipality does not generally use and would not have. In this case, the county or municipality can arrange with someone else for use of the equipment. The arrangement will be on a rental basis at an agreed rate per unit of time and may either include or exclude the operator.

LFA-state agreements are only for State Highway Rehabilitation Maintenance (SHRM) projects and are with the county in which the work is located.

The SHRM project designation denotes a specific funding program and may be with state funds and any federal funds for which individual projects are eligible. Construction of SHRM projects may also be accomplished by private contractors through the let process.

Administration of an executed agreement is performed by the region - SPO section.

### **210.4 Authority for Expenditure (AFE)**

There are annual calendar year agreements that provide each county with a state highway maintenance budget and the approval for expenditures within that budget. These are similar to LFAS agreements in that reimbursement is for actual costs in accordance with established labor and machinery rates and materials costs. The department exercises general direction of the work and the county submits monthly, itemized invoices to the region.

The Authority for Expenditure (AFE) document is a department contract form. This form will contain a list of the work to be done, standards for compliance, and directions for billing, along with listings of county-furnished and state-furnished materials. For additional information on AFE contracts see chapter 6 of the Maintenance Manual.

## **210.5 State Force Account (SFA)**

### **210.5.1 General**

When improvement of a state highway involves items of work which the department's field crews are uniquely qualified to perform, and when the department would obtain a financial advantage financing the work with improvement funds rather than with other funds, the department may determine to perform the work with department forces as a separate project.

A State Force Account (SFA) is the agreement that is used to formalize the work to be done and the specifications for the work. Normally federal aid is involved in the project. Pavement marking, signing, and electrical work for which federal financing is available are the most common types of projects performed in this manner.

### **210.5.2 Administration of State Force Account Agreements**

Records are maintained of the actual cost of the work by charging field crew time, their personal expenses, equipment rentals, and material costs to a special professional and technical project assigned by Bureau of Highway Operations (BHO). Field crews should also charge truck costs to the professional and technical project on their monthly truck reports. In addition, the crew chief should prepare and submit in the usual manner appropriate daily activity reports and electrical service reports, showing the professional and technical project number as the project on which they are working. These reports will include listings of the materials used. The BHO will charge the cost of these materials to the professional and technical project. Upon completion of the work, the total accrued cost is transferred as a lump sum to the construction project.

The engineer and staff will continue to charge time and expenses to the highway improvement project constructed with non-state forces.

The engineer must adhere to the following steps in administering SFA projects.

1. When field work begins, an interim site time will be recorded in AASHTOWare Project Construction and Materials®, showing the WisDOT as contractor.
2. At the time work on the project is completed.
  - 2.1 Record a completion date in AASHTOWare Project Construction and Materials®.
  - 2.2 Prepare a memorandum to the BHO and the BFS. This memorandum corresponds to the letter normally sent to the contractor upon acceptance of a contract and should contain a statement the work was inspected, found to be acceptably completed on a specified date.
  - 2.3 Prepare a memorandum to the BFS with a copy to the BHO including:
    - A statement that all work is completed.
    - A statement advising of the last month in which time, travel expenses and truck expenses were charged directly to the professional and technical project.
  - 2.4 Upon receipt of the memorandum mentioned in item 2.3 above, the BHO will ascertain whether or not all materials cost transfers have been accomplished. When these transfers have been made, the BHO will arrange to transfer the total cost of the professional and technical project to the construction project I.D., and will ask the BFS to close the professional and technical project.

## **210.6 Transportation Facilities Economic Assistance and Development (TEA)**

### **210.6.1 General**

Contracts for TEA projects may be accomplished only by let contracts. The TEA designation is a specific funding type and not a contract type. However, it is included here because of some unique rules and procedures. The contracts may be either state administered or locally administered.

### **210.6.2 State Administered**

Contracts that are state administered are treated the same as any other let contract. In the event federal Economic Development Authority (EDA) funds are used by the local agency to help finance the project, the contract provisions will contain requirements for employment of local labor and provisions for small, minority, women, and labor surplus area businesses. FHWA requirements will also be included, except there will be no Disadvantaged Business Enterprise assignment.

### **210.6.3 Locally Administered**

Contracts that are locally administered will have very little involvement of state construction staff. In some instances, construction staff may be asked to inspect the project and complete a TEA Project Completion certificate. In this event they will be certifying that the project was built and appears to be in substantial conformance with the approved plan and specifications, as amended by change order. The person doing the final inspection should be furnished with a copy of the plans, contract provisions, and any change orders. A detailed inspection is not necessary or expected. The inspection is primarily to determine that the project was built to the length and width specified, and the surfacing, curb and gutter, and

appurtenances are of the type specified and are in place. Copies of any change orders are to be attached to the certificate.

### **210.7 Agreements with Utilities and Railroads**

When the improvement of a state highway requires the facilities of a railroad or a public utility company to be altered, rearranged or relocated, and when the cost of such alteration, rearrangement or relocation is an obligation of the department, Wisconsin statute 84.06(4) provides that the department may enter into an agreement with the railroad or public utility company for performing this work. The agreement is not based on bids, but is an agreement negotiated between the department and the railroad or public utility company covering performance of the work and basis of payment.

The basis of payment may be either an agreed lump sum price, or it may be a time and materials agreement with which the department will pay the actual costs incurred by the railroad or utility company for furnishing labor and materials and for use of equipment in performing work under the agreement. Equipment will be paid for at a rate agreed upon by the department and utility or railroad.

Utility agreements may require a utility subcontractor to perform all or a part of the work prescribed in the utility contract. Generally, at the time the prime utility agreement is negotiated, any work to be performed under a utility subcontract is noted and authorized. The engineer should be aware of any authorized subcontract as well as any subsequent approval issued to a utility to subcontract all or part of the work. Should unauthorized or unapproved subcontract work be performed under the prime utility agreement, the engineer should bring the matter to the attention of the area construction supervisor or team leader. For more information on utilities and railroads see [CMM 256](#) and [CMM 258](#).