



1.1 Design and Design Related Contracts

Work activities performed by consultants under contract with WisDOT must be monitored by the WisDOT project manager to ensure that a quality service/product is received within the agreed upon time schedule and cost of the contract. For design, design related and specialty contracts along with work orders over \$50,000, the consultant is required to prepare and submit a progress report (Form DT1509) with its monthly invoices to the WisDOT project manager for each month in which contract work is performed. WisDOT staff can download the form at:

<http://wisconsindot.gov/Pages/global-footer/formdocs/default.aspx>

The primary purpose of the progress report is to monitor the overall progress of actual work performed. The consultant's cost and staff-hour estimates by task or deliverable product identified during contract negotiations are tools available for analyzing the consultant's progress. If there is a significant variance in actual work completed shown on the progress report versus percent of time elapsed on the contract or amount billed on the invoices, a meeting between the WisDOT project manager and consultant may be necessary to resolve the differences.

The WisDOT project manager should recommend to the prime consultant how the progress data is to be prepared and submitted. [Attachment 1.1](#) is an example of a completed monthly progress report for a design engineering contract. The work completion percentage calculated by task reflects the percentage of actual work completed rather than the amount of time or money spent on that task.

Work performed by subconsultants shall be included by task in the monthly progress reports. The subcontract work may be combined with the work completed by the prime or shown separately. Variations to this are acceptable provided the monthly progress report reflects actual work completed by both the prime consultant and subconsultant.

A copy of the monthly progress report is retained in the project file by WisDOT project managers. If the project is local, the project managers send a copy to the local unit of government. The final invoice should include the final progress report.

1.2 Amendments to Contract

All amendments to design and design related contracts authorizing a change in project hours, contract value, or completion time must be accounted for in the progress report. The completion date and percentages by task on the progress report should reflect all approved amendments.

All amendments to construction engineering contracts authorizing a change in project hours, contract value, or completion time must be recorded and monitored.

1.3 Phased Contracts

The first submissions of the monthly progress reports will represent the appropriate progress data that pertains ONLY TO THE FIRST PHASE OF THE TOTAL CONTRACT. As each additional phase of the contract is authorized to proceed, the submitted monthly progress report shall reflect a culmination of progress data from all authorized phases(s). Regardless of what phases have been authorized, the starting date on Form DT1509 will always remain the same and reflect the starting date of the first phase.

1.4 Progress Meetings

Often it is useful for the district staff to meet with the consultant when the project has reached 30% completion. At this time the consultant can report in detail on what has been done and the district can provide the consultant with guidance on how to proceed. The project schedule can also be revised as necessary. [Attachment 1.2](#) is a checklist for conducting this type of review meeting on a design contract.

1.5 Construction Engineering Contracts

The WisDOT project manager is responsible for monitoring the progress of work performed by construction engineering consultants. Monthly progress reports are not required unless stated in the terms of the contract or requested by the WisDOT Project manager. The WisDOT project manager is still responsible for monitoring the

progress of work activities performed by the consultant as described in the contract. Attachments 3, 4 and 5 are examples of progress reports that can be used by WisDOT project managers to monitor construction engineering contracts.

LIST OF ATTACHMENTS

- [Attachment 1.1](#) Sample Monthly Progress Report
- [Attachment 1.2](#) Checklist for Design Progress Meeting at 30% Completion
- [Attachment 1.3](#) Example Construction Project Progress Report
- [Attachment 1.4](#) Example Construction Project Progress Report
- [Attachment 1.5](#) Example Construction Project Progress Report

FDM 8-25-5 Performance Evaluations

July 23, 2015

Evaluations using the Contract Administration and Reporting System (CARS).

WisDOT is transitioning to an electronic contract system. The evaluation procedure is covered under "EVALUATIONS" in the CARS manual at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrces/contracts/cars.aspx>

Please contact the CARS administrator at WisDOTCARS@dot.wi.gov.

WisDOT evaluates the work of consultants providing professional services at the completion of services or as necessary on multi-year contracts. Consultant performance evaluations are required on all contacts of \$10,000 or more. Evaluations should reflect both the positive and negative aspects of the consultant's performance on the project. WisDOT staff will affirm consultant successes on the evaluation as well as provide constructive feedback on how the consultant could improve its performance.

Evaluations will be conducted by the WisDOT Project Manager in a timely manner. When the design of a structure is involved, the Central Office Bureau of Structures should be contacted for comments prior to completion of the evaluation form.

A preliminary evaluation should be performed at an early stage of the performance of services. An informal discussion between the consultant and WisDOT Project Manager may be warranted to discuss the evaluation and identify ways to improve areas in which performance is not adequate. When conducted in the constructive manner intended, this preliminary evaluation can enable required corrective measures to be implemented in a timely manner and potentially eliminate a negative or adverse final evaluation at the conclusion of the services. Additional interim evaluations may be performed when necessary.

To achieve consistent ratings between consultants and regions, the following rating system shall be used for both design and construction engineering contracts:

CONSULTANT PERFORMANCE EVALUATIONS	
5.	Outstanding - Performance consistently exceeds requirements in all phases of the work. This level should be reserved for only special occasions where the Consultant always exceeds expectations, and is under budget and ahead of schedule.
4.	Above Average Performance - Performance is above average. Most requirements of the job are completed ahead of schedule. Consultant requires a minimal amount of monitoring. Quality leadership principles and sound engineering judgments are used. Agency coordination and public involvement activities are always timely and well done. Consultant reacts well to criticism.
3.	Satisfactory - Meets quality/performance expectations. Project is completed on time and on budget. There may be some areas that need minor improvements but the tasks are usually done on time and with minor revisions and monitoring. Good engineering practices/management. Adequate evaluation of alternatives and trial solutions. Agency coordination is adequate.
2.	Below Average Performance - Some work or time requirements need improvement but with monitoring are acceptable. Consultant's work is done solely by rote. Consultant should have a plan for improvement if they expect to be selected for additional projects.
1.	Unacceptable Performance - The consultant's work has numerous errors/omissions and the consultant requires a high degree of monitoring to complete the work. Significant improvements need to be made before consideration for future work.

Written comments are encouraged to better define the numerical ratings. WisDOT project managers may use the comment fields to address issues not mentioned on the evaluation. Suggestions for improvement should be

included when appropriate.

5.1 Design and Related Services Evaluations

There are five items used as criteria for rating the consultant's performance on a project. A rating of five (5) is the highest (positive) score, and a rating of one (1) is the lowest score. The rating for each category is not necessarily an average valuation of the selected answers within that category. Evaluations must be completed for each project ID on a design engineering contract.

5.2 Construction Evaluations

There are six items used as an evaluation criteria for rating of the consultant's performance on a project. A rating of five (5) is the highest (positive) score, and a rating of one (1) is the lowest score. The rating for each category is not necessarily an average valuation of the selected answers within that category.

Each project ID on the construction engineering contract must be accounted for on a consultant evaluation. This means that although evaluations only need to be completed for each let project on a construction engineering contract.

5.3 Master Contracts/Work Orders

Consultants shall have their overall performance evaluated on both types of master contract (full service and specialty). In addition, consultant evaluations are also required for individual work orders estimated at \$10,000 or more on full service Master contracts.

Performance evaluations are optional on work orders for specialty master contracts or those full-service master contract work orders that are estimated at less than \$10,000.

5.4 Evaluation Submittal

Evaluations must be performed in CARS WITHIN THREE MONTHS of the completion of the consultant services. The WisDOT geographic and/or Consultant Unit supervisors may also review the evaluation during the process.

For local projects, the project manager should also send copies of the evaluation form and last progress report to the local unit of government. The BFS-CAU will maintain a statewide record of performance evaluations for each consultant and, upon request, provide them to consultant selection committees for review.

5.5 Appeal Procedure

Consultants may appeal a decision or the results of an evaluation. Only written appeals will be accepted and they must be submitted to the WisDOT Project Manager who shall review the appeal and prepare a response. The WisDOT Project Manager, in agreement with his geographic and Region Consultant Unit supervisor, then forwards the appeal and response to the Statewide Consultant Engineer. After reviewing the documents, and researching the situation thoroughly, the Statewide Consultant Engineer forwards the information to the Administrator of the Division of Transportation Systems Development for a final decision.

FDM 8-25-10 Consultant Contract Payments

December 18, 2015

10.1 Consultant Preparation of Invoice

Invoicing using the Contract Administration and Reporting System (CARS)

WisDOT is transitioning to an electronic contract system. WisDOT will be implementing the mandatory use of CARS for invoicing cost incurred after June 30, 2015. All evaluations will also be developed and submitted to consultants effective July 1, 2015. This will mean that all August 2015 invoices requesting payment for costs incurred in July 2015 will be submitted in CARS. CARS does allow a firm to complete an August invoice for costs incurred prior to July 1, 2015 on the same invoice.

Contracts completed by September 30, 2015 will be exempt from mandatory use. Master contracts with all work orders completed by September 30, 2015 will be exempt from mandatory use. Final invoices for all contracts/work orders must be received by December 1, 2015.

CARS allows firms to convert all contracts with previous payments made through paper invoicing to complete next invoice in CARS. The invoice procedure is covered under "INVOICING" in the CARS manual at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/cars.aspx>

Please contact the CARS administrator at: WisDOTCARS@dot.wi.gov.

Consultants may invoice WisDOT no more often than once per month for the authorized contract work or

services performed to date. Invoices must be in the general format of WisDOT's standard consultant contract invoice shown in [Attachment 10.1](#). The text below explains specific items shown in this attachment.

- A. State name of firm as stated in contract, address to which payments should be mailed, and federal employer identification number.
- B. State invoice number assigned by the firm and used in its accounting system and the date the invoice was prepared.
- C. State beginning and ending date of the time period in which invoiced costs were incurred. Specify if this invoice is for an adjustment of prior period costs.
- D. State name and address of WisDOT project manager.
- E. State project identification number for which costs were incurred. This project number must be included in the contract document. Invoice separately for each project number.
- F. State a brief description of the project: highway name, number, and limits, if applicable, and the county in which the project work is located.
 - 1. State the original contract amount. For phased contracts, show only that portion of the original amount specified for the first fiscal period.
 - 2. State the revised contract amount including all amendments approved to date. For phased contracts, include authorizations issued for periods following the first fiscal period.
 - 3. For contract items involving an actual-cost-plus-fixed-fee method of payment, show cost of work completed to date by consultant, including:
 - a. Direct labor costs incurred to date,
 - b. Estimated total indirect costs using the rate approved for current use, and
 - c. Non-labor direct costs incurred to date.

Fixed fee are based on the percentage of the contract work that is completed. The percent complete (progress) should be calculated using one of the following formulas:

$$\frac{\text{Total Direct Labor Invoiced} + \text{Total Overhead Invoiced}}{\text{Total Estimated Contract Direct Labor} + \text{Total Estimated Contract Overhead}} \times 100\%$$

OR

$$\frac{\text{Total Direct Labor Invoiced}}{\text{Total Estimated Contract Direct Labor}} \times 100\%$$

- 4. For contract items involving a lump sum method of payment, state the product of the lump sum amount multiplied by the percentage of work completed to date. When different lump sum amounts are included in the contract for different work elements within the same project, repeat this line for each lump sum amount.
- 5. For contract items involving a cost-per-unit-of-work method of payment, state the number of work units completed multiplied by the rate per unit. Completed work units must be delivered to WisDOT prior to invoicing. When different rates are included in the contract for different work elements within the same project, repeat this line for each different work element.
- 6. For contract items involving a specific rate of compensation method of payment, state the daily or hourly rate multiplied by the number of days or hours expended. When different rates are included in the contract for different employee classifications or pieces of equipment, repeat this line for each rate.
- 7. State the cumulative total of amount billed to the prime consultant by subconsultants.
- 8. State the sum of lines 3 through 7.
- 9. State the cumulative total of all previous invoices submitted to WisDOT. Show cumulative total of payments received to date if different than the cumulative total of previous invoices submitted.
- 10. Show the difference between total cost to date and amount previously invoiced.

Complete the consultant certification, including a complete signature and title of an authorized representative of the consultant firm.

Include, as supporting documentation, the following:

- For actual cost method of payment,
 1. A schedule of direct labor for time period covered by the invoice including the employee name, classification and number of hours for each employee. The invoice should also show the total number of hours and direct labor cost by classification. Direct labor rates and direct labor costs by employee are not required. Requirements for more detailed invoice formats must be approved in advance by the Statewide Consultant Engineer on a contract by contract basis. See [Attachment 10.5](#) - Direct Labor Summary Example.
 2. An itemization of non-labor direct costs for the time period covered by this invoice.
- For lump sum method of payment, a progress report identifying the amount of work completed to date.
- For specific rate of compensation method of payment, a summary of hours, days, or other unit expended in performance of the contract by employee classification or type of equipment, whichever is applicable.
- For subconsultant costs included in the amount due on this invoice, a copy of the subconsultant's billing to the prime.

Submit invoices to the WisDOT project manager. Provide one copy unless more are specifically requested. Final invoices must be submitted within three months of completion of the contract work or services.

10.2 WisDOT Approval and Processing

The WisDOT project manager will take the following actions:

1. Review the consultant invoice for accuracy, completeness, allow ability, and reasonableness of costs in relation to the nature and extent of the work or services performed. A full list of employees must be included on contract amendments for Specific Rate contract.
2. Approve the invoice by indicating the following on the bottom of the form:
 - The date the invoice was received by WisDOT; under prompt payment law interest is owed by WisDOT if payment is not made within 30 days.
 - The amount approved for payment.
 - Indication of whether the invoice represents a partial or final payment.
 - Complete signature.
3. Forward the approved invoice with its supporting documents and Monthly Progress Report. If the Invoice is a final payment, the Evaluation form must also be sent. Send to:

Bureau of Business Services
Expenditure Accounting Contract Payment Unit
Room 851, Hill Farms State Office Building, Madison

10.3 Disputes

If a consultant invoice is not properly completed by the consultant or some or all of the invoiced costs are disputed, the WisDOT project manager will provide the consultant an explanation regarding the ineligibility or deficiencies. Such notice will be provided by the WisDOT project manager within 30 days of receipt by WisDOT of the original invoice. A sample format for documenting this notification is shown in [Attachment 10.2](#).

In the event of a dispute, the WisDOT project manager should promptly submit any undisputed portion of the invoice to Bureau of Business Services, Expenditure Accounting Section for processing. Later, when the disputed portion is resolved, a copy of the invoice and the dispute notice can be forwarded to the Bureau of Business Services, Expenditure Accounting Section for processing of any unpaid but resolved portions.

10.4 Payments Of Three Party Contracts

Three-party contracts are those through which a municipality secures a consultant and WisDOT merely acts in an approval capacity. Payments to the consultant will be made directly by the municipality, or the municipality may elect, through contract basis of payment language, to have WisDOT pay the consultant. The invoicing and approval processes for three-party contracts should follow all of those outlined above, except when the municipality pays the consultant:

1. The consultant submits invoices to the municipality.
2. The municipality prepares a request for WisDOT reimbursement of any state or federal cost sharing and forwards the request (with copy of the paid consultant invoice) to the WisDOT project manager.

3. The WisDOT project manager reviews, approves, and forwards payment request to
 Bureau of Business Services
 Managerial Accounting Services
 Room 851, Hill Farms State Office Building Madison

10.5 Invoicing For Charges in Approved Indirect Cost Rate -Actual Cost Plus Fixed Fee Contracts Only

Indirect cost rates used to estimate and propose costs for actual-cost-plus-fixed-fee contracts are ultimately adjusted to the audited and approved rate for the time period in which the contract work was performed. This can be accomplished in one of two ways.

1. WisDOT's Bureau of Business Services, Audit Unit, during final cost audits of actual-cost-plus-fixed-fee contracts, adjusts indirect cost rates from provisional to actual.
2. Consultants may, if approved by the WisDOT Contract Manager, self-adjust invoiced costs to reflect the most recently audited and approved indirect cost rate and the final audited and approved rate throughout the life of, and at the completion of, an actual cost contract. The form for requesting approval to self-adjust is shown in [Attachment 10.3](#), and the format for invoicing (paying) for rate changes is shown in [Attachment 10.4](#).

10.6 Web Resources

The invoice forms are available at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/misc.aspx>

LIST OF ATTACHMENTS

Attachment 10.1	Consultant Contract Invoice
Attachment 10.2	Notice of Good Faith Dispute/Improper Invoice
Attachment 10.3	Request to Adjust Indirect Cost Rates
Attachment 10.4	Request to Adjust Indirect Cost Rates
Attachment 10.5	Direct Labor Summary Expense

FDM 8-25-15 Contract Amendments

October 3, 2016

15.1 Overview

Consultant contract amendments are required for any modification in the terms of the original contract that change the cost of the contract, change the subcontractors working on the contract, significantly change the character, scope, complexity, or duration of the contract services or significantly change the conditions under which the services are required to be performed. For amendments to a Federal Major related consultant contract timely coordination and approval by the FHWA point of contact is required.

A contract amendment shall clearly outline the changes made and include an amount and method of compensation for the work or services covered by the amendment. In addition, it shall state the total revised contract amount and basis of payment resulting from the amendment changes.

Fee computations display the increase or decrease in costs by classification and engineering task. They do not restate the total costs of the contract in those terms.

Amendments to increase the pay rate of an employee on a specific rate contract are not allowed, unless the duties of an employee changes and/or there is a time extension caused by WisDOT, In the event of a new negotiated rate due to contract extension, the new rate should not take effect until the end of the original contract period.

Overruns or underruns in the costs of services do not warrant an adjustment in the fixed fee portion of a cost plus fixed fee contract. Adjustment of the fixed fee portion in an actual cost plus fixed fee contract or a lump sum contract will be allowed only when a significant change to the scope of services is made.

Amendments shall not be approved for services on projects not included in the original contract. The BSHP Contract Manager must approve the addition of project IDs and/or other project locations to a contract before the amendment is submitted to BSHP.

Renewals and/or extensions for period contracts must also obtain prior approval from the BSHP Contract Manager, and the DTSD Statewide Consultant Engineer.

Amendments may not expand the scope of a contract beyond that published in the original solicitation. For example, a contract originally advertised solely as preliminary design cannot be amended to extend the scope to include final design through PS&E. Another contract for the additional services must be advertised through the appropriate solicitation process (see [FDM 8-5-15](#)). "If authorized" tasks cannot be included in an agreement.

The Statewide Consultant Engineer must be involved with negotiations for amendments over \$1,000,000. Before negotiation of contract amendments exceeding \$1,000,000 can begin, coordination with the Statewide Consultant Engineer is required. Services under a contract amendment shall not proceed until the amendment is executed. The Transportation Region/Bureau Director or a designee may sign amendments less than \$50,000. Full signatures are required. Amendments of \$50,000 or more require the approval and signature of the WisDOT Contract Manager. All amendments to period contracts including no cost amendments require the approval and signature of the WisDOT Contract Manager.

In emergency circumstances such as severe time constraints or sudden unanticipated changes in project conditions, the consultant may be authorized to proceed with amendment services prior to agreement on the amount of compensation and execution of the amendment. Even in these circumstances, the services cannot begin without approval by either the WisDOT Statewide Consultant Engineer or the WisDOT Contract Manager when the cost is estimated at \$50,000 or more or the Region/Bureau Director, or designee when the cost is estimated to be less than \$50,000. In addition, WisDOT's obligation of cost only extends ten business days after the Department's verbal authorization to proceed. If the amendment is not executed within that time, the work must be discontinued. The consultant can begin the amendment services again once the amendment is executed. Emergency work amendments are exempt from having to show satisfactory work to date, and from having to consider the net benefits of submitting the work for advertisement.

15.2 Approval of Amendments

15.2.1 Amendments Requiring Statewide Consultant Engineer Approval

Any amendment that differs significantly from the initial advertisement requires the Statewide Consultant Engineer's approval.

15.2.2 Amendments Requiring Governor's Approval

Amendments meeting the following criteria must be approved by the WisDOT Contract Manager before negotiations begin and must be submitted to the Secretary's and Governor's Offices for approval once submitted to CAU:

1. There is a significant change of the scope of the contract, such as adding an additional project location.
2. The cost of the amendment is greater than or equal to the original cost of the contract. For example, the Governor must approve a \$15,000 amendment to a contract originally signed for \$10,000.
3. The total costs of all amendments on the contract are greater than or equal to the original cost of the contract. If the first two amendments on a \$10,000 contract added \$8,000, then a third amendment adds another \$5,000--that amendment (and all following amendments) must go through the Secretary's and Governor's Offices.

Amendments that do not meet the above criteria, but still have a significant impact on the contract as a whole, will be examined on a case-by-case basis to determine if the Governor's approval is necessary.

The WisDOT Contract Manager will notify the persons submitting the amendment that it needs Governor's approval before the approval process begins.

15.3 Submittal to BSHP-CAU

Revise 8-25-15.3 (Submittal to BSHP CAU) to remove DT1521 and replace with Amendment Submittal Sheet.

15.3.1 Amendments Less than \$50,000

WisDOT project manager will send the following to BSHP-CAU:

1. Two signed amendments, both with original signatures. CAU will forward original copy to the DTSD Central Files, and a copy to the Expenditure Accounting Unit for encumbrance of funds and payment processing.
2. Supporting documentation as listed [in the Amendment Submittal Sheet at:](#)
<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/supp-doc.aspx>

All amendments to period contracts require the approval and signature of the WisDOT Contract Manager,

regardless of estimated cost this includes no cost amendments or time extension only amendments.

15.3.2 Amendments of \$50,000 or More

WisDOT project manager will send the following to CAU:

1. Four signed amendments, all with original signatures. CAU will perform a pre-award review. The Contract Manager will approve and sign the amendment documents. Two copies of the executed amendment will be returned to the WisDOT project manager, one original will be forwarded to the DTSD, Central Files, and a copy will be forwarded to the Expenditure Accounting Unit for encumbrance of funds and payment processing.
2. Supporting documentation as listed in the [Amendment Submittal Sheet](#) at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/supp-doc.aspx>

[Amendment Submittal Sheet](#) is the [process review](#) for amendments to CAU. [Attachment 15.1](#) is an example of an amendment. The supporting documentation listed in the [Amendment Submittal Sheet](#) must accompany this amendment.

15.4 Amendments to Work Orders

Amendments to Work Orders follow the same procedures as outlined above.

15.5 Web Resources

More information about submitting amendments is available on the consultant extranet at (WisDOT and consultant links):

<http://wisconsindot.gov/pages/doing-bus/eng-consultants/cnslt-rsrcs/contracts/instructions.aspx>

LIST OF ATTACHMENTS

[Attachment 15.1](#) Sample Contract Amendment

FDM 8-25-20 Conflict Resolution Process

March 4, 2013

20.1 Introduction

The intent of this process is to resolve all issues within a reasonable amount of time. Any conflict will be discussed and every effort made to resolve the conflict at the level where it originates. This will reduce time consuming efforts of others. This conflict resolution process also allows project participants to escalate issues that they are uncomfortable handling. In this manner, the project participants are able to preserve their good working relationship with each other.

Conflict is the state of disagreement between two or more parties. The nature of difference between the conflicting parties could involve one or more of the following: (Reference: Managing Total Quality, Roadmap To Problem Solving, manual by 3M, 1992.)

Goals: Sometimes the parties differ in what they would like to achieve.

Methods: Sometimes two people or groups agree on the problem and the goals, but they differ on the best method to achieve the goals.

Facts: Sometimes the conflict is rooted in the facts of the present situation. Each party may have different facts or different perceptions of the same facts.

Values: Sometimes differences are more deeply rooted in the beliefs and personalities of the parties.

Generally, it is easiest to resolve differences over facts and most difficult to settle differences over values.

20.2 When Should the Process Be Used

The Conflict Resolution/Issue Resolution Matrix ([Attachment 20.1](#)) can be used on any size two-party or three-party design contract and construction engineering contract. It is recommended for use on contracts over \$50,000 or where there is potential for adversarial relationships between the parties.

[Attachment 20.2](#) is an example of how the Conflict Resolution/Issue Resolution Matrix could be filled out for a large two-party design project.

[Attachment 20.3](#) is an example of how the Conflict Resolution/Issue Resolution Matrix could be filled out for a small two-party design project.

[Attachment 20.4](#) is an example of how the Conflict Resolution/Issue Resolution Matrix could be filled out for a construction project. Note: An additional column was inserted into the matrix for the contractor's conflict escalation path. By replacing the contractor's conflict escalation path with a local unit of government conflict escalation path, [Attachment 20.4](#) could also be used for a three-party design project.

The Conflict Resolution/Issue Resolution Matrix - [Attachment 20.1](#) is very flexible in how it can be expanded or condensed for a project as shown in [Attachment 20.2](#) through 20.4.

The shell documents for [Attachment 20.1](#) through 20.4 can be obtained from the Statewide Consulting Engineer, Division of Transportation Infrastructure Development.

20.3 When Should the Matrix Be Filled Out

The Conflict Resolution/Issue Resolution Matrixes should be filled out by the appropriate parties while the project is being scoped. This will help determine who is responsible for resolving various project issues.

20.4 How Should the Matrix Be Filled Out

It is suggested that a range of 50 to 90 percent be used for the lowest level in the column for Anticipated Percent of Conflicts to be Resolved at this Level. This is in line with WisDOT's Quality Based Leadership philosophy on empowerment, where almost 85 to 95 percent of the issues on a project should be resolved by the two lowest levels in the matrix.

The Time Available column for each level to resolve a conflict needs to reflect the appropriate time to make a timely and quality decision based upon the best information available during the same time period.

Names of individuals for each party are to be filled in for each level within the conflict resolution path. The matrix needs to be updated when participants or roles change during the course of the project.

ALL PARTIES INVOLVED IN DEVELOPING THE MATRIX SHOULD SIGN AND DATE THE AGREEMENT. It is recommended that those participants responsible for resolving at least 90 percent of the issues on the project should review and sign the matrix agreement.

20.5 General Guidelines

1. A conflict or issue may be identified by any party at any level during the course of the project.
2. Any conflict will be discussed and every effort made to resolve the conflict at the level where it originates.
3. Bypassing a level in the matrix is not allowed. For example, a consultant project engineer is not allowed to work directly with a WisDOT design chief or district director on a conflict at the level of origination.
4. Proper documentation is required to escalate any issue or conflict. Note: The level of documentation must be agreed upon prior to initiating the project. The extent of the documentation should be addressed on a specific case-by-case basis.
5. If a conflict can't be resolved at a specific level in the matrix, it can be accelerated to the next level before the allotted time is up if both parties agree.
6. The conflict resolution matrix must be updated when participants or roles change during the project.
7. The conflict resolution matrix should be evaluated periodically for effectiveness and mutually adjusted if improvements can be made to the process.
8. If any party is absent, conflicts involving a critical path schedule should be escalated to the next appropriate level within the corresponding matrix time frame.
9. Ignoring the conflict or decision is not acceptable.
10. No individual is expected to make a decision that makes him/her uncomfortable.
11. Have empathy for other's views. Listen to and try to understand the conflict or problem from the other person's point of view and accounting for what "real" or legitimate needs they have.
12. Communications between the parties will be open, honest, person-to-person, timely, and up front, in a trusting atmosphere.
13. Once a conflict is identified and project participants are informed, each level of the escalation process has a specific time allotted for resolution of the conflict. If the conflict cannot be resolved within the defined time frame, it automatically moves up to the next level.

14. Once an unresolved conflict moves up to the next level, participants at previous levels relinquish their decision rights to the next higher level of participants indicated in the matrix.

20.6 Conflict Resolution Process

20.6.1 At Origination Level

1. Each party clearly defines the problem/issue in a written paragraph or less and exchanges with other party. (See General Guideline Number 4.)
2. Determine what data or information is known about the problem.
3. Determine what additional data or information is needed to understand/solve the problem; who should obtain it; and when should it be obtained.
4. Determine if there are other key players in regards to the problem.
5. If appropriate, brainstorm for solutions. Criticism of solutions is not allowed.
6. Evaluate alternatives and recommend solution.
7. If agreement is reached, either party or both parties can specify agreement in writing.
8. If conflict remains unresolved, both parties must document previous steps (1 through 7) and provide this information to both participants at the next level in the matrix. The documentation should include **AT LEAST TWO OR MORE RECOMMENDED SOLUTIONS TO BE CONSIDERED BY THE NEXT LEVEL OF PROJECT PARTICIPANTS.**

20.6.2 At Subsequent Levels

1. Review the written documentation of the problem/issue from the previous level.
2. Obtain input from WisDOT and/or consultant participants involved in previous levels.
3. Obtain input from peers, if necessary.
4. Determine if additional data or information is needed to clarify the problem; who should obtain it; and when should it be obtained.
5. Determine if there are other key players in regards to the problem.
6. Independently redefine the problem based upon facts with previous personal value judgments removed.
7. Determine if participants involved in previous levels need to be involved in meeting with counterpart in the matrix.
8. Meet with counterpart participant in the escalation matrix and follow steps 6,7, and 8 described in **ORIGINATION LEVEL.**

If the conflict is an issue of a consultant design or a construction engineering error and remains unresolved throughout all levels of the escalation matrix, [FDM 8-25-25](#) will be followed.

LIST OF ATTACHMENTS

Attachment 20.1	Conflict Resolution Matrix
Attachment 20.2	Sample Conflict Resolution Matrix - Large Design Project
Attachment 20.3	Sample Conflict Resolution Matrix - Small Design Project
Attachment 20.4	Sample Conflict Resolution Matrix - Construction Project

FDM 8-25-25 Process for Consultant Contract Claims and Disputes

December 22, 2011

25.1 General Policy

The intent of this process is to resolve each contract claim or dispute within a reasonable amount of time and at the organizational level closest to the source of the problem. Uniformity is important in notification, documentation and in providing the consultant adequate opportunity to participate in resolving the issue. This process is needed to ensure that both parties' rights are protected if an issue isn't resolved and continues in the review/appeals process.

WisDOT will utilize the following methods to assist in uniformly applying the above policy:

1. It is recommended that the guidance and forms in [FDM 8-25-20](#), Conflict Resolution Process, be utilized as part of the process to establish a consultant contract.
2. During the design stages of a project, potential design error/omissions will be returned to the consultant for correction as described in [FDM 19-10-45](#).
3. The final design engineering consultant for the project should be invited to attend the pre-construction conference.
4. At the pre-construction conference, WisDOT, the contractor and the design engineering and construction engineering consultant(s) will identify and document the chain of communication and time frame to resolve issues among all parties.
5. At the end of each calendar year, each region will report to the Statewide Consulting Engineer in the Division of Transportation Infrastructure Development and FHWA all additional cost recovery issues identified, outstanding, and resolved for the year.

25.2 Early Notification to The Consultant

Early identification of a potential error/omission enables WisDOT and the consultant to work together to minimize the adverse effects of the error/omission. Just as the consultant has a duty to meet a standard of care by contract for their services, WisDOT has a duty to properly notify the consultant of an alleged error/omission.

The consultant has contracted with WisDOT to resolve any problem resulting from a potential error/omission quickly. When WisDOT incurs additional costs due to an

error/omission during the design or construction of the project, early notification to the consultant is required. Both parties agree that during construction of the project, time is of the essence in solving the problem and avoiding delays in construction. All parties have a duty to identify reasonable alternatives for resolution. Resolving the problem should be first. Responsibility and financial implications become secondary and can be handled by these procedures.

Listed below are opportunities for WisDOT to notify the consultant of possible additional costs as early as any of the following may occur:

- When designs and plans do not meet FDM requirements.
- When WisDOT receives pre-bid questions on projects.
- When contractor bid prices reviewed by WisDOT are not consistent with PS&E estimates.
- At pre-construction conferences.
- During review of the contractor's schedule for production rates and identification of equipment/staffing to meet intermediate and final contract completion dates.
- When a contractor's proposed sequencing/staging and respective quantities appear to be inconsistent with the designer's intentions.
- When the Bureau of Project Development proposes to use cost reduction incentives in the construction contract.
- At construction project meetings where upcoming activities and schedule revisions are discussed because of additional work caused by increases in quantities and contract change orders.
- When the contractor notifies WisDOT of changed conditions, unforeseen conditions, or intent to file a claim.
- When WisDOT decides to add work to the contractor's contract.
- When input from others, such as utilities or local units of government, indicates a potential problem.

25.3 Claims Process

The overall objective of this process is to resolve all consultant claims and disputes in a timely manner and at the level of origination. The review and appeals process allows claims or disputes to escalate if they remain unresolved. The first three levels of the review remain in the regions. Each level of review should include the staffs that are directly involved.

1. Review by WisDOT Project Manager

At the first indication of a claim, dispute or a professional error/omission, the WisDOT project manager will:

- 1.1 Notify their Supervisor (and for informational purposes DTSD, Bureau of Project Development, Consultant Services Section).

- 1.2 Immediately notify the consultant who designed the project or who is providing construction engineering services or both, whichever is applicable. This notification can be made verbally (document in the project file or diary for construction) and followed-up by a written notice. The consultant will be invited to participate in the development of a solution with region staff. If time is of the essence, the consultant will participate in this process without immediately seeking compensation. WisDOT and the consultant are to resolve such problems first and afterwards determine cause and financial responsibility.
 - 1.3 If cause and financial responsibility are disputed, staffs need to prepare written descriptions of the claim/dispute with facts supporting their position. All decisions, descriptions of work, photographs, records of labor, materials, and equipment should be fully documented. Any immediate action taken to reduce the additional costs of the claim/dispute or error should also be documented.
 - 1.4 If agreement is reached, the documentation is forwarded to the region Project Development Section Chief and DTSD, BPD.
 - 1.5 If the claim/dispute remains unresolved, prepare a report that includes the previous documentation in addition to a complete description and results of the previous discussion/meeting with the consultant and forward to the region Project Development Section Chief.
2. Review by Region Project Development Section Chief
- 2.1 Review the written report of the claim/dispute from the previous level and obtain input from WisDOT and consultant participants involved in the previous level. Determine if additional information is needed to clarify the issue, who should obtain it, and when it should be obtained. Determine if there are other key players who should be involved in resolving this matter.
 - 2.2 Independently redefine the problem based upon facts and meet with the consultant to resolve claim/dispute.
 - 2.3 If agreement is reached the documentation is forwarded to the region Director and DTSD, BPD.
 - 2.4 If the claim/dispute remains unresolved submit the previous documentation, in addition to a complete description and results of the previous discussion/meeting with the consultant and forward to the Region Director.
3. Review by Region Director
- 3.1 Review the written report of the claim/dispute from the previous level and obtain input from WisDOT and consultant participants involved in previous level. Determine if additional information is needed to clarify the issue, who should obtain it, and when it should be obtained. Determine if there are other key players who should be involved in resolving this matter.
 - 3.2 Independently redefine the problem based upon facts and meet with the consultant to resolve claim/dispute.
 - 3.3 If agreement is reached, the documentation is filed and a copy of the resolution letter and financial settlement from the consultant is forwarded to DBM's Bureau of Business Services (BBS), Fiscal Services Section. The resolution letter should include the construction project ID. If the settlement applies to a specific category of the construction project, that information should be included in the resolution letter.
 - 3.4 If the claim/dispute cannot be resolved at the region level, the claim may be submitted to the DTSD, Bureau of Project Development, and Consultant Services Section for consideration by the WisDOT Claims Review Group
4. Review by WisDOT Claims Review Group
- The WisDOT Claims Review Group will review any claim/dispute which cannot be resolved between the region and the consultant. Appeals to the WisDOT Claims Review Group resulting from a region decision should be made directly to the Bureau of Project Development (DTSD) by either the region or the consultant. All appeals must be in writing and received within 30 days of the date of the region decision.

The WisDOT Claims Review Group will be chaired by the Deputy Administrator for Regions of the Division of Transportation System Development and consists of the following members:

- Division of Transportation System Development Statewide Bureau Director from a bureau not affected by the claim/dispute.
- Division of Transportation System Development Region Director from a region not affected by the claim/dispute.

DTSD will coordinate with the Chairperson on a hearing date, location and composition of WisDOT Claims Review Group. Depending upon the expertise required to review the claim, the Chairperson may invite other key staff to observe the hearing. DTSD will make the arrangements for the hearing and schedule the hearing within 60 days of receipt of the written appeal.

25.4 Hearing Procedures

25.4.1 Pre-hearing Submittal Requirement

At least ten days before the date of the hearing, both the consultant and region are required to submit a Statement of Facts, not to exceed ten pages. The Statement of Facts will be a condensed version of each party's presentation and will contain all issues to be presented at the hearing. DTSD will distribute copies of each party's statement to each member on the Claims Review Group. Also, each party's statement will be provided to the other party at the same time it is submitted to DTSD. This will allow each party to respond to the other party's statement at the hearing and enable each party to be fully prepared to answer questions posed by the Claims Review Group.

25.4.2 Hearing Agenda

The Chairperson will open the hearing with introductions of the Claims Review Group members, the consultant's representatives, and the region's representatives. The Chairperson will provide an overview of the review process, describe how the decision will be made and when the parties will be notified of that decision.

25.4.3 Project Overview

The region will present a brief project description, including the location of the project, the types of services performed by the consultant involved, and any other information requested by the Claims Review Group.

25.4.4 Presentation Order

Each party has 90 minutes to present their case. The claimant will make the initial presentation, followed by questions from the Claims Review Group. Then, the other party will make their presentation followed by questions from the Claims Review Group.

25.4.5 Presentation Summary and Rebuttal

Starting with the Claimant, both parties are given another ten minutes to summarize and conclude their case. The Claims Review Group may follow up with questions of both parties.

The Chairperson will close the hearing.

25.4.6 Decision

The Claims Review Group will consider both written materials summarizing each party's position as well as the discussion provided at the hearing. It will reach a decision shortly after the hearing and both parties will be notified in writing no later than 60 days following the hearing.

There should be a written decision that summarizes disputed facts, agreed upon facts, disputed analyses of application of specifications or contract requirements, the involved reasoning, and a conclusion.

If the decision of the Claims Review Group for this appeal is to pursue reimbursement from the consultant, the consultant will be notified of the decision and options for repayment.

25.4.7 Guidelines for Hearing Participants

1. Each party should provide their own visual aids: diagrams, layouts, maps, photos, etc. If audiovisual equipment is required, arrangements should be made with the DTSD before the hearing date.
2. Presentations are to be made by consultant and region personnel directly involved with the project.
3. The hearings will be informal with neither party being presented by legal counsel
4. All parties are expected to present all facts known to them and to refrain from speculation, hearsay, or other unsubstantiated material.

5. All presentations, responses, and comments are to be addressed to the Claims Review Group.
6. Each person is to refrain from interrupting the presentation or response of another. There will be no disruptive conversations between or among the parties.
7. Questions will be asked by the Claims Review Group only.

25.5 Appeals

While the WisDOT Claims Review Group completes the appeals process for these procedures, the State Claims Board may remain as an option for some disputes. The State Claims Board is not part of the Department of Transportation. It is a legislatively created body consisting of members of the executive and legislative branches. A claims board form may be obtained from the State Claims Board, 101 E. Wilson Street, P.O. Box 7864, Madison, WI 53707-7864, 608-264-9595.

FDM 8-25-30 Audits

March 4, 2013

30.1 Indirect Cost (Overhead) Rate Audit

Consultants contracting with WisDOT for cost-based engineering or related services must file a consultant financial report to WisDOT including indirect cost rates and disclosure of cost accounting practices. Unless approved under a cognizant audit from another State DOT or a federal agency. Indirect cost rates proposed by consultants for estimating or invoicing costs under WisDOT contracts are subject to audit by the Division of Transportation Investment Management Audit and Contract Administration Section.

The purpose of an indirect cost rate audit is to determine:

1. The adequacy of the consultant's accounting system to accumulate costs of government contracts,
2. The adequacy of the consultant's estimating system to develop accurate cost-based estimates for government contracts,
3. The consultant's maximum indirect cost rate to be used for estimating costs on current contract proposals,
4. The consultant's indirect cost rate to be used for adjusting the actual cost of work under WisDOT cost-plus-fixed-fee contracts,
5. A record of items the consultant charges directly to projects, and ensure the consultant allocates all like direct costs in a fair and consistent manner,
6. Current labor rates and other direct cost rates, and
7. The adequacy of internal controls.

Indirect cost rate are based on a 12-month time period consistent with the consultant's fiscal year. The indirect cost rate for engineering consultant firms is generally computed as a percentage of total direct labor. Some firms, however, may allocate certain elements of indirect cost using different methods such as general and administrative costs allocated on a percentage of total costs.

The Audit and Contract Administration Section may approve the use of un-audited rates on a contract-by-contract basis based on the size and type of contract, audit workload and audit risk(s) as determined by prior audit experience with the firm.

Indirect cost rates may NOT be fixed in contracts using a cost-plus-fixed-fee method of payment. Federal regulations prohibit negotiation of indirect cost rates. WisDOT may accept a firm's unilateral offer to work at a reduced or limited indirect cost rate, including a negotiated field or project office rate in lieu of establishing field rate accounting. When consultants unilaterally offer to work at reduced or limited rates, the following language should be added to actual cost plus fixed fee contracts:

"Reimbursement for indirect costs shall be at the final audited rate for the period in which the work is performed, except that it shall not exceed _____ %."

Most indirect cost rate audits are performed by WisDOT. However, WisDOT recognizes and utilizes cognizant audits performed by other state and federal agencies. In the event separate audits are performed by state and federal agencies, WisDOT shall consider the audit performed by the federal agency as the cognizant audit. WisDOT does not recognize audits performed by a CPA firm hired by the consultant firm as a cognizant audit unless that audit has been reviewed and accepted as a cognizant audit by another state DOT in accordance with guidelines published in the AASHTO Uniform Audit and Accounting Guide for Audits of A/E Consulting Firms. WisDOT does not recognize a state or federal agency auditor's review, compilation or "agreed upon

procedures” report as a cognizant audit.

In lieu of performing its own indirect cost rate audit, WisDOT may rely in whole or in part on audit work performed by another state, federal, or local agency or independent certified public accountant even though the audit doesn’t meet the definition of a cognizant audit. Work of other auditors must meet the following conditions:

1. The audit must be current and of sufficient detail;
2. The audit was conducted within the context of all of a firm’s government contracts and not limited to impacts on a particular contract or multiple contracts with particular agencies.
3. The audit must be performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States;
4. WisDOT is permitted to review the auditor’s work papers supporting the indirect cost rate audit and any related financial statement audit; and
5. The auditor’s report should include
 - Auditor’s opinion that indirect costs are measured in accordance with 48 CFR, Chapter 1, Part 31.2,
 - Auditor’s report on internal controls,
 - Disclosure of cost accounting and other significant policies including itemization of costs the consultant charges directly to projects and a description of the policy for allocating labor directly to projects.

WisDOT’s reliance on work performed by other auditors does not constitute establishment of a rate by a cognizant agency within the context of rules published in 23 CFR 172.7. WisDOT may at its option perform a cognizant review of a CPA audit procured by the consultant and issue a cognizant acceptance in accordance with the AASHTO Uniform Audit and Accounting Guide for Audits of A/E Consultants.

Firms should estimate costs using indirect cost rates submitted through their most recent consultant financial report form. Those rates are still subject to audit prior to approval of the contract. Because the use of unaudited rates poses potential delays and changes in the contract approval process, contracting Regions/Bureaus may request audit/approval of indirect cost rates during contract negotiations. CAU will coordinate the request for an indirect cost rate audit of consultant firms officially selected but not having an audited rate.

A summary of current indirect cost rates is available (for WisDOT staff only) on the dotnet at:

<http://dotnet/dtim/cau/auditreports.htm>

The summary report includes current indirect cost rates as well as information on cost accounting practices disclosed by consultant firms.

Individual audit reports maintained by the Audit Unit include an audit opinion on the Schedule of Indirect Costs, which displays the total indirect cost (overhead) rate and all of its components. The Notes to the Schedule of Indirect Costs are also included in the audit reports. These notes list direct cost items that may be charged to WisDOT projects, as well as the firm’s principal business activity, their method for distributing the cost of direct labor and other disclosures regarding the firm’s overhead rate and costing policies.

The final part of the document, the Report of Internal Controls and Compliance, explains any problems found by auditors in the firm’s charging methods or accounting system. Consultants may be required to submit a response including a corrective action plan if an auditor’s report identifies significant deficiencies in internal control or findings of non-compliance.

WisDOT staff should contact the Audit Unit with any questions about information included in or missing from a firm’s audit report or about firms not included on the web site. [FDM 8-5-47](#), “Consultant Financial Report” and [FDM 8-10-20](#), “Cost Accounting Requirements and Principles” also include additional information on indirect cost rates.

30.2 Pre-Award Review

A pre-award review is an examination and verification of the accuracy and appropriateness of all of the financial terms, conditions, and calculations of a consultant contract proposal, including subconsultant proposals. It includes, but is not limited to, the following steps:

1. A review of the consultant’s most recent indirect cost rate proposal and audit to determine that the indirect cost rate proposed does not exceed the maximum rate approved for current use,
2. Verification of the accuracy of proposed labor rates and

3. Verification that proposed direct costs are those which the consultant normally charges direct and they are in conformance with company policy, as well as federal regulations and WisDOT policy .

30.3 Final Cost Audit

Following final payment and closing of a consultant contract, the Audit Unit performs a final cost audit. The purpose is to determine that all costs for which payment has been made by WisDOT to the consultant are allowable according to the Federal Acquisition Regulation (FAR), WisDOT policy, and the terms of the contract.

During final cost audits for contracts utilizing a cost-plus-fixed-fee method of payment, indirect cost rates previously used to propose costs and for invoicing are adjusted to the actual audited rates for the time period(s) in which the work was actually performed. This may result in the consultant owing money to or receiving money from WisDOT subject to the contract maximum amount.

Final cost audits are generally performed concurrently with the consultant's indirect cost rate audit.

30.4 Confidentiality/Disclosure of Indirect Cost Rates

Under Wisconsin Statutes, contract cost estimates, audit reports, and audit working papers are public information. 23 CFR 172 prohibits sharing of indirect cost rates with other consultant firms or with government agencies that do not receive FHWA funds.

When a public information request is made for information which includes indirect cost rates such as consultant cost reports by firm, audit reports, and consultant contracts with consultant fee computations, the department will ask parties requesting information on indirect cost rates whether they represent another firm or a government agency, which is not a recipient of federal highway funds.

If the requesting party represents another firm or a government agency that is not a recipient of federal highway funds, the department will notify the requesting party that distribution of the requested information is restricted by federal regulations. The Department will redact all references to rates as well any other numbers in the reports and proposals which would permit calculation of a rate. For consultant fee proposals, amounts to be redacted include hourly labor rates, total labor costs, consultant indirect cost rates, and total indirect costs.

If the requesting party is another government agency that is a recipient of federal aid highway funds, the information shall be provided. The Department must notify that firm whose cost information was requested that the transfer of information occurred.

If the requesting party does not represent another firm or a government agency, which is not a recipient of federal highway funds the information should be provided in accordance with normal procedures governing public information requests, any release of consultant indirect cost rates should note the confidential nature of the data by including the following statement:

“The attached document includes information pertaining to a consultant's overhead rates. The consultant firm to which these rates pertain may consider this data to be of a confidential nature.”