

***CHAPTER 24 – WORK DONE BY UTILITIES AND RAILROADS**

Utilities and Railroads may be required to adjust or relocate their facilities to allow the Agency to construct a project. In certain circumstances, costs incurred to the Utility or Railroad by the project may be reimbursable by the Agency. The Agency will work with both the utility and/or Railroad to determine what compensable rights they have.

Compensable rights for any Utility or Railroad involvement with an Agency project should be identified during project development. The Region Utility Specialist (RUS) and the State Utility Liaison (SUL) will review and make a determination of the Utilities compensable rights. The Project Manager (PM) may be involved at that time in locating planned Contract Work or identifying potential conflicts.

The State Railroad Liaison (SRRL) will work with the Project team and Railroad to identify and schedule the needed Railroad work as well as what is reimbursable by the Agency. The SRRL will develop and execute any agreements needed for a project.

NOTE: *Utility and Railroad processes and requirements for Design-Build Contracts are specified in the DB General Provisions, Section DB174.10. You will need to refer to DB174.10 when handling work done by Utilities and Railroads on Design-Build projects.*

24-1 RELOCATION OR ADJUSTMENT OF UTILITIES OR RAILROAD FACILITIES

When it has been determined that the Agency is responsible for costs incurred by a Utility or Railroad, the SUL or SRRL will generally be responsible for preparing the appropriate documentation for the work on Federal and Agency projects. The PM should contact the RUS, SUL or SRRL if there are any questions.

When a Utility or Railroad must adjust or relocate their facilities to accommodate an Agency Project, the PM must establish and maintain close contact with the proper Utility or Railroad personnel to assure that:

- All conflicts with Project facilities are addressed.
- Relocation or adjustments are in compliance with the Plans and Specifications for the Project.
- Relocation or adjustments will not cause further conflicts.
- Relocation or adjustments will be completed within the timelines specified in the Contract. If a delay is caused by the Utility or Railroad, the PM must record the

* All Marked Text Updated October, 2010

information needed to analyze the delay and resolve the delay with the Contractor.

The PM must record information regarding Utility or Railroad activities in the Project Diary, General Daily Progress Report, or a separate diary. When conflicts occur with a Utility or Railroad during construction, the PM should consult with the RUS and SUL for Utilities, and the SRRL for Railroad conflicts.

If the Contractor requests work be done by the Utility or Railroad that is strictly for the Contractor's convenience, the Contractor is responsible for any costs. If the cost of that work is included in the billing sent to the Agency, that cost should be deducted from payments to the Contractor.

24-2 RAILROAD PROTECTIVE SERVICES GUIDELINES

Railroads provide protective flagging for trains, or will install other protective devices if the Contractor will be working on Railroad property. The Agency generally must pay the cost of these protective services or devices.

The PM must not allow the Contractor to perform any activity on Railroad properties until the Contractor obtains the required Railroad Protective Insurance. Contact the SRRL if assistance is needed for Railroad Protective Insurance.

The PM must caution the Contractor to exercise due care in performing Work on Railroad properties to avoid damage to the facilities. No work is to be permitted on Railroad property if the proper Railroad flagging or protective devices are not installed.

If the Agency will be responsible for the costs of flagging by the Railroad to protect Railroad facilities during Contract Work, the PM must submit an [Order for Force Work, form 734-1105](#), and obtain proper approval to pay for the flagging **before** the Work starts. This Work is usually budgeted as an Anticipated Item.

The PM must also record, in a diary or General Daily Progress Report, on a daily basis, the Work performed and the resources used. When the PM receives the billing from the Railroad, the PM must verify the billing and make payment to the Railroad under the Force Order. This payment will be made in the TEAMS accounting system and is coded with the Contract EA and State Force Order number.

Section 00170.01(e) of the Contract will specify the maximum time (hours) or dollar amount that the Agency will pay for Railroad protective services.

Example:

When railway flagger services are required, the Agency will pay the flagger services costs up to a total of 20 hours. If this value is exceeded and additional flagging services are needed, the Contractor shall pay the Agency an amount of \$100 per hour for each hour in excess of the total value identified above.

The PM must issue a [Weekly Statement of Contract Time Charges, form 734-3483](#), to the Contractor showing the number of days or hours that have been used for Railroad protective services (flagging) each week.

If the Contractor requires Railroad protective services (flagging) beyond the time or amount specified in the Contract, the PM must assess these overruns to determine if the Contractor is responsible for reimbursing these additional costs to the Agency.

(a) Contractor IS Responsible for Excess Railroad Flagger Services Costs

If the PM determines the Contractor **is** responsible for any flagger services costs in excess of the hour or dollar value limit stated in 00170.01(d), a 6000 series adjustment will need to be processed for the amount stated in the Contract. [*Refer to [Chapter 12E – Adjustments to Lump Sum and Other Items](#)*]

This adjustment will typically be a dollar-per-hour charge for each hour in excess of the total number of hours shown in the Contract. In the following example, the Contractor would be assessed a negative price adjustment of \$100/hour for anything over 20 hours.

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CONSTRUCTION MANUAL**

Example:

| Oregon Department of Transportation | | INSTALLATION SHEET | | | | | | | | | |
|---|--|--|--|---------------|----------|---------------|----------|---------------|---------|---------------|-----------------|
| PROJECT: CONSTRUCTION MANUAL - CHAPTER 24 EXAMPLE | | | | | | | | | | | |
| CONTRACT: C12345 | EA: CON012345 | ITEM NUMBER: 6001 | | | | | | | | | |
| ITEM DESCRIPTION: Railroad Protective Services (Flagging) | | GROUP NO.: 011 | | | | | | | | | |
| METHOD OF QUALITY ASSURANCE | | | | | | | | | | | |
| SUPPORTING DATA | | | | | | | | | | | |
| T - TEST CERTS <input type="checkbox"/> | Q - COMPLIANCE CERTS <input type="checkbox"/> | L - ODOT LAB. REPORT # _____ | | | | | | | | | |
| O - CMO <input type="checkbox"/> | E - EQUIP. LIST & DWG. <input type="checkbox"/> | BG - BLUE AND GREEN SHEETS <input type="checkbox"/> | | | | | | | | | |
| F - FIR # _____ | SO - SMALL QUANTITY <input type="checkbox"/> | QPL Approved <input type="checkbox"/> | Qualified <input type="checkbox"/> | | | | | | | | |
| NO QUALITY DOCUMENTATION REQUIRED <input checked="" type="checkbox"/> | | QUALITY DOCUMENTS SUBMITTED W/PAYNOTE <input type="checkbox"/> | | | | | | | | | |
| QUANTITY DATA | | | | | | | | | | | |
| PREVIOUS QUANTITY: _____ | UNIT: Dollar | RE-MEASURE <input type="checkbox"/> | | | | | | | | | |
| INSTALLED THIS NOTE: -500 | UNIT: Dollar | MEASURED IN PLACE METHOD <input type="checkbox"/> | | | | | | | | | |
| TOTAL TO DATE: -500 | UNIT: Dollar | PARTIAL PAYMENT <input type="checkbox"/> | | | | | | | | | |
| | | BID ITEM COMPLETE <input type="checkbox"/> | | | | | | | | | |
| | | INSTALLATION COMPLETE <input type="checkbox"/> | | | | | | | | | |
| AS PER PLAN: YES <input type="checkbox"/> NO <input type="checkbox"/> IF NO WHY? _____ | | UPDATED AS CONSTRUCTED PLANS <input type="checkbox"/> N/A <input type="checkbox"/> | | | | | | | | | |
| LOC. / STA.: _____ | PLAN SHEET # _____ | NOTE # _____ | NOT ON PLANS <input checked="" type="checkbox"/> CL <input type="checkbox"/> Rt. <input type="checkbox"/> Lt. <input type="checkbox"/> | | | | | | | | |
| SKETCH / CALCULATIONS / REMARKS: | | INSTALLATION DATE: May 22 - 24, 2010 | | | | | | | | | |
| <p>Per Section 00170.01(e) the Agency will only pay for Railroad flagger services costs up to a total of 20 hours.</p> <p>The Contractor required a total of 25 hours of RR flagging to complete the paving work on the "B" Line:</p> <table style="margin-left: auto; margin-right: auto;"> <tr><td>May 22, 2010:</td><td>10 hours</td></tr> <tr><td>May 23, 2010:</td><td>10 hours</td></tr> <tr><td>May 24, 2010:</td><td>5 hours</td></tr> <tr><td>TOTAL:</td><td>25 hours</td></tr> </table> <p>Per Section 00170.01(e) the Contractor is assessed a negative price adjustment of \$100/hour for each hour over the 20 hours:</p> <p style="text-align: center;">25 hours - 20 hours = 5 hours x -\$100/hr = (-\$500)</p> <p>The Union Pacific Railroad submitted their invoice for flagging services performed between May 22 and May 24, 2010: Total 25 hrs x \$38/hr = \$950.00 (attached) This invoice was paid on June 4, 2010 (SFO #2).</p> | | | | May 22, 2010: | 10 hours | May 23, 2010: | 10 hours | May 24, 2010: | 5 hours | TOTAL: | 25 hours |
| May 22, 2010: | 10 hours | | | | | | | | | | |
| May 23, 2010: | 10 hours | | | | | | | | | | |
| May 24, 2010: | 5 hours | | | | | | | | | | |
| TOTAL: | 25 hours | | | | | | | | | | |
| INSPECTOR SIGNATURE: <i>Dina N. Spector</i> | | DATE: <i>10-15-10</i> | SEE BACK <input type="checkbox"/> | | | | | | | | |
| FOR OFFICE USE ONLY | | | | | | | | | | | |
| CHECKED BY: <i>Valley Fields, GAC</i> | QUANTITY CHECKED <input checked="" type="checkbox"/> | QUALITY CHECKED <input checked="" type="checkbox"/> | DATE: <i>10-21-10</i> | | | | | | | | |
| QUANTITY THIS NOTE: -500 | UNIT: Dollar | ESTIMATE # 3 | NOTE # 7 | | | | | | | | |

(b) Contractor IS NOT Responsible for Excess Railroad Flagger Services Costs

If the PM determines the Contractor **is not** responsible for any flagger services costs in excess of the hour or dollar value limit stated in 00170.01(d), a Contract Change Order (CCO) will need to be written modify the Contract language to eliminate the requirement for an assessment against the Contractor. The CCO must clearly explain why the Contractor is not responsible for the excess flagging costs.

Under this scenario, the full cost of all flagger services will be paid through TEAMS and charged against the Project authorization, with none of the costs being borne by the Contractor.

24-3 BILLINGS FOR WORK (Other than Protective Services) DONE BY UTILITIES OR RAILROADS

Any reimbursable Work completed by Utilities or Railroads will be billed to the Agency. These billings are typically not budgeted or charged against a Project's construction phase. The PM may be requested to verify that the work completed by the Utility or Railroad is in compliance with the Plans and Specifications.

24-4 DELAYS CAUSED BY UTILITIES

The agreement with the Utility or Railroad generally specifies the timeframe within which they will relocate or adjust their facilities. If this work is not completed within the specified timeframe and a delay impacts the Contractor's work, the Agency generally will be responsible for adjustments to Contract Time and additional costs that the Contractor incurred due to the delay. For that reason, it is imperative that the PM assure that each Utility completes its work such that it does not delay the Contractor's work. If the PM cannot assure the performance of the Utility, they can communicate the need to complete their work by an agreed-upon date to avoid consequences. It is also imperative that the PM ensure that all agreements with a Railroad are fully executed and make available a copy of the agreement at the Project Site.

The PM must:

- Assure that the Contractor continually coordinates with each Utility and Railroad so the Utility or Railroad knows what work is expected of them to accomplish the required work within the specified timeframes.
- If needed, remind the Utility that it could be responsible for delay costs caused by their work.
- If the Utility or Railroad work results in a delay to the Contractor's work, the PM shall record all information needed to analyze the delay. The PM will work with the SUL and RUS to minimize any delays caused by the Utility. The PM will work with the SRRL to minimize any delay caused by the Railroad.

If the Agency is required to compensate the Contractor for delay costs caused by Utility work, the Agency may recover those delay costs from the Utility. If a Utility delay occurs, the PM should initiate the process for the Agency to take action to recover delay costs; this would include consulting with the Region/Bridge Delivery Unit (BDU) and the Contract Administration Engineer (CAE).

[Also refer to [Chapter 13 - Contract Time](#) and [Chapter 27 - Disagreements, Disputes, and Claims](#)]

24-5 BILLING A UTILITY FOR EXTRA AGENCY COSTS

If the Agency incurs additional costs because a Utility failed to timely relocate, remove, protect, or otherwise modify its facilities to accommodate the needs of the Agency and its Contractor, the Agency may attempt to recover the additional costs from the Utility. The additional costs may include any delay damages paid by the Agency needed to mitigate the impact(s) resulting from the Utility facilities.

Use the following procedure to recover the additional costs from the responsible Utility:

**PROCEDURE FOR BILLING A UTILITY FOR EXTRA AGENCY COSTS
FOR DELAY CLAIMS OR OTHER COST RECOVERY ISSUES INVOLVING UTILITIES**

| <u>Responsibility</u> | <u>Step</u> | <u>Action</u> |
|------------------------|-------------|---|
| Contractor | 1 | In accordance with the Contract, communicates with the Engineer about work that impacted the cost or completion of the Contract. Written notifications to be submitted as specified in the Contract. |
| Project Manager (PM) | 2 | Communicates the situation to the (RUS), including any documentation received from the Contractor. May request assistance and advice from the Region/BDU and CAE. The PM and the Contractor should record and track the cost of the impacted work. |
| Project Manager (PM) | 3 | Issue a letter, which puts the affected Utility on notice for delay costs and include documentation received from the RUS. Inform the Utility of its opportunity to monitor and track the cost of the impacted work. Sends copies to the RUS and SUL. |
| Project Manager (PM) | 4 | Requests that Transportation Program Office Manager open a standard sub-job (040 non-participating) on the construction expenditure account, to track extra engineering or other administrative costs that result from the Utility delay. |
| Highway Program Office | 5 | Issues a revised memo to the PM of assigned (open) sub-jobs for the Project. Send copies to the RUS and SUL. |
| Project Manager (PM) | 6 | Works with the Utility, RUS, SUL, and the Contractor to resolve the issue. If necessary, the Contractor may escalate the issue to a claim under Section 00199. |

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CONSTRUCTION MANUAL**

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| | | Communicates the dispute settlement outcome and the estimated utility assessment or liability to the SUL. |
| State Utility Liaison (SUL) | 7 | Sends a letter with assessment and outcome information to the Utility. Sends a copy to the RUS. |
| State Utility Liaison (SUL) | 8 | Initiates utility billing process with Highway Program Office. Determines method and timing of billing. Delivers acknowledgement to the PM that the Utility has been billed and sends copies to the RUS and CAE. |
| Transportation Program Office | 9 | Invoices Utility, receives payment(s), and disperses funds accordingly. |