

Chapter Five
AGREEMENTS

BUREAU OF LOCAL ROADS AND STREETS MANUAL

BUREAU OF LOCAL ROADS & STREETS

Nov 2012

AGREEMENTS

5(i)

Chapter Five **AGREEMENTS**

Table of Contents

<u>Section</u>	<u>Page</u>
5-1	AGREEMENTS OF UNDERSTANDING..... 5-1(1)
5-1.01	Statutory Background..... 5-1(1)
5-1.02	Agreement Content..... 5-1(1)
5-1.03	Local Agency Responsibilities..... 5-1(2)
5-1.04	District Responsibilities..... 5-1(3)
5-1.05	Processing Agreements of Understanding..... 5-1(3)
5-2	JURISDICTIONAL TRANSFERS..... 5-2(1)
5-2.01	Jurisdictional Responsibility..... 5-2(1)
5-2.02	Jurisdictional Transfer Guidelines..... 5-2(1)
5-2.03	IDOT Responsibilities..... 5-2(2)
5-2.04	Processing of Jurisdictional Transfers..... 5-2(2)
5-2.05	Real Estate Transfers..... 5-2(3)
5-3	JOINT AGREEMENTS..... 5-3(1)
5-3.01	Joint Agreements Between State and Local Agencies..... 5-3(1)
5-3.01(a)	Requirements for a Joint Agreement..... 5-3(1)
5-3.01(b)	Agreement Content..... 5-3(1)
5-3.01(c)	Draft Agreement..... 5-3(3)
5-3.01(d)	Final Agreement..... 5-3(3)
5-3.01(e)	Amendment to Federal-Aid Agreement..... 5-3(3)
5-3.02	Agreement for County Engineer's Salary..... 5-3(3)
5-3.03	Joint Agreements Between Local Agencies..... 5-3(4)
5-3.03(a)	Guidelines for an Agreement..... 5-3(4)
5-3.03(b)	Format..... 5-3(4)
5-3.03(c)	Draft Agreement..... 5-3(4)
5-3.03(d)	Signatures..... 5-3(5)
5-3.03(e)	Distribution..... 5-3(5)
5-3.04	Interagency Cooperative Agreements..... 5-3(5)
5-4	LETTERS OF UNDERSTANDING/LETTERS OF INTENT..... 5-4(1)
5-5	ENGINEERING AGREEMENTS..... 5-5(1)
5-5.01	General..... 5-5(1)

BUREAU OF LOCAL ROADS & STREETS

5(ii)

AGREEMENTS

Nov 2012

5-5.02	Types of Services.....	5-5(1)
5-5.03	Length of Services	5-5(1)
5-5.04	Conflict of Interests	5-5(1)
5-5.05	Retainage.....	5-5(2)
5-5.06	Qualification Based Selection for Consultant Engineering Services	5-5(2)
	5-5.06(a) Introduction	5-5(2)
	5-5.06(b) Applicability	5-5(3)
	5-5.06(c) Basic Steps for QBS	5-5(5)
5-5.07	Standard Engineering Services Agreements	5-5(9)
	5-5.07(a) Form BLR 05510.....	5-5(9)
	5-5.07(b) Form BLR 05520.....	5-5(9)
	5-5.07(c) Form BLR 05530.....	5-5(10)
5-5.08	Other Engineering Services Agreements.....	5-5(10)
	5-5.08(a) Road District Engineering and Administration	5-5(10)
	5-5.08(b) Inspection and Testing Services	5-5(11)
	5-5.08(c) Non-Standard Engineering Services Agreement Required Clauses	5-5(12)
5-5.09	Method of Payment.....	5-5(12)
	5-5.09(a) Compensation Formulas	5-5(12)
	5-5.09(b) Efficiency Factor.	5-5(16)
	5-5.09(c) Complexity Factor.....	5-5(16)
5-5.10	Agreement Processing	5-5(16)
5-5.11	Supplements to the Agreements	5-5(17)
5-5.12	Administration of the Agreement	5-5(18)
	5-5.12(a) Project Administrator.....	5-5(18)
	5-5.12(b) Final Check.....	5-5(18)
	5-5.12(c) Project Closeout.....	5-5(18)
	5-5.12(d) Audits.....	5-5(19)
5-5.13	Evaluation	5-5(19)
5-6	RAILROAD AGREEMENTS	5-6(1)
5-6.01	Requirements for a Railroad Agreement	5-6(1)
5-6.02	Agreement Format	5-6(1)
5-6.03	Preparation and Execution	5-6(2)
5-6.04	Procedure for Joint State-Local Agency Railroad Agreements	5-6(3)
5-6.05	Compensation.....	5-6(3)
5-6.06	Illinois Commerce Commission	5-6(3)

BUREAU OF LOCAL ROADS & STREETS

Nov 2012

AGREEMENTS

5(iii)

5-6.06(a)	Illinois Commerce Commission Jurisdiction	5-6(3)
5-6.06(b)	General Procedures.....	5-6(4)
5-6.06(c)	Petition and Stipulated Agreements Guidance	5-6(4)
5-6.06(d)	Petition Procedures.....	5-6(5)
5-6.06(e)	Stipulated Agreement Procedures	5-6(6)
5-7	UTILITY AGREEMENTS	5-7(1)
5-7.01	Requirements for Utility Agreements.....	5-7(1)
5-7.02	Agreement Format	5-7(1)
5-7.03	Preparation and Execution	5-7(2)
5-8	MAINTENANCE AGREEMENTS FOR STATE HIGHWAYS.....	5-8(1)
5-8.01	Traffic Signal Master Agreements	5-8(1)
5-8.02	Maintenance Agreements	5-8(1)
5-9	TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVES AGREEMENTS.....	5-9(1)
5-10	INVOICE PROCESSING.....	5-10(1)
5-10.01	General	5-10(1)
5-10.02	Supporting Documentation.....	5-10(1)
5-10.03	Payment Status.....	5-10(1)
5-10.04	Local Agency Single Audit Requirement	5-10(1)
5-10.05	Obligation Time Limit	5-10(2)

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5(iv)

Nov 2012

Chapter Five AGREEMENTS

5-1 AGREEMENTS OF UNDERSTANDING

5-1.01 Statutory Background

Generally, highway construction by local highway authorities that is funded in whole or in part with federal funds, State funds, and Motor Fuel Tax (MFT) funds, requires IDOT supervision and approval. However, 605 ILCS 5/5-402 and 605 ILCS 5/7-203.2 provide that counties and municipalities may enter into Agreements of Understanding (AOU) with IDOT to construct and/or maintain highways or streets using MFT funds, or other State funds administered under MFT policies and procedures, without the approval and supervision of IDOT. The local agency, however, must show that it is adequately organized, staffed, equipped, and financed to discharge satisfactorily such statutory requirements and duties. Local agencies must have an appointed full-time engineer. The district will determine if the local agency has met these requirements.

Road construction projects that are funded entirely by a county (e.g., do not receive any State or federal financing) may be performed under the supervision and approval of IDOT at the option of the county.

5-1.02 Agreement Content

Agreements of Understanding (AOU) between IDOT and a local agency are typically used for maintenance and construction, or maintenance only. Counties may include work done by road districts under the supervision of the county engineer. IDOT and the local agency must prepare the terms of the agreement to ensure that funds are expended consistent with the intent of the law. The following stipulations should be included in the agreement:

- The responsibilities of the local agency and IDOT must be listed.
- In the event that a vacancy occurs in the local agency's position responsible for overseeing expenditure of MFT funds (e.g., county engineer, city/public engineer), the AOU will be temporarily suspended.
- IDOT may make periodic inspection of the jobsite and project files, as it deems necessary, to satisfy itself that the work is being done in compliance with the plans, specifications, and IDOT policies and procedures.
- The agreement must state what work is covered by the agreement.
- The provisions of the agreement do not apply to any federal or State funded projects that are not administered under the MFT polices and procedures.
- The agreement can be discontinued at the discretion of either party.
- The use of MFT funds, other than specified in the agreement, will require approval by IDOT.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-1(2)

Jan 2006

- The provisions of the agreement may be tailored to the local agency.

5-1.03 Local Agency Responsibilities

The local agency is responsible for the following items and any other items that are pertinent to providing a clear understanding between the parties in the agreement:

1. To maintain an adequate, fully staffed organization and to keep IDOT advised of the organization and key staff changes.
2. To develop a coordinated long-range transportation plan for construction and maintenance, in accordance with 605 ILCS 5/5-301 and 605 ILCS 5/7-301.
3. To follow the procedures set forth by 605 ILCS 5/5-403 and 605 ILCS 5/6-701.3 for counties, and 605 ILCS 5/7-203 for municipalities for maintenance and construction of any highway or street.
4. To use the design criteria and to follow the policies and procedures adopted by the Bureau of Local Roads and Streets. Modifications and deviations must be approved by IDOT.
5. For construction projects, to ensure that all plans and specifications are prepared by an Illinois licensed professional engineer or by individuals under the direct supervision of an Illinois licensed professional engineer. All plans are required to have an engineer's professional and structural seal and signature, as applicable.
6. For counties to obtain the Bureau of Bridges and Structures approval for all preliminary bridge design and hydraulic reports, and all final bridge plans for bridges and culverts having a clear span of more than 30 ft (9 m) (605 ILCS 5/5-205.1).
7. To obtain all necessary environmental clearances and construction permits before advertising a project for letting or constructing the project with its own forces.
8. Securing all right-of-way prior to advertising a project for letting, unless prior approval by IDOT has been secured.
9. To obtain IDOT's approval of plans and specifications for improvements or connections to State highways and/or appurtenances prior to advertising for bids. The local agency is responsible for withholding the final payment to the contractor until written certification is received by IDOT that the project has been completed according to the plans and specifications and that the work itself is acceptable to IDOT.
10. To advertise for bids using IDOT's Notice to Contractor Bulletin and to let contracts for maintenance or construction to the lowest responsible bidder, or to do the work itself through its officers, agents, or employees.
11. To perform, or have someone else perform, construction and material inspections required for its construction and maintenance projects using procedures in accordance with the IDOT's Project Procedure Guide.
12. To make available, upon request, all records for review and/or audit by IDOT. These documents must be retained for a minimum of 5 years after the work has been completed. Agencies operating under AOU are required to supply IDOT, if applicable to the project, with one copy of the various documents for record purposes as specified in AOU.
13. To obtain IDOT approval for any use of MFT funds, other than those specified in the agreement.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jan 2006

5-1(3)

14. To request IDOT's authorization of MFT funds on a timely basis.
15. To submit an annual report to the district listing the projects undertaken, the funds expended, and the projects' status.
16. To furnish the district all documents required by AOU.

5-1.04 District Responsibilities

The district is responsible for the following items and any other items that are pertinent to providing a clear understanding between the parties in the agreement:

- to authorize MFT funds when requested by the local agency,
- to provide a general review of the local agency's operation under the AOU, and
- to perform an annual audit of MFT accounts.

5-1.05 Processing Agreements of Understanding

A local agency desiring to operate under AOU or desiring additional information about AOU should contact the district. Sample agreements are available from the district. If the district determines that a local agency is qualified to operate under AOU, the agreement must be executed by the local agency and Central BLRS.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-1(4)

Jan 2006

5-2 JURISDICTIONAL TRANSFERS

5-2.01 Jurisdictional Responsibility

Jurisdiction is the authority and obligation to administer, control, construct, maintain, and operate a highway subject to the provisions of the Illinois Highway Code. See Section 3-2 of this Manual for a discussion on jurisdiction.

When an agency has jurisdiction of a highway, it has various obligations that include reconstruction, signing, maintenance, etc. All of these obligations remain with the agency until the jurisdiction is transferred to another entity. Transfer of the maintenance or any other portion of jurisdiction is not allowed. For example, a county can enter into an agreement to have another agency perform maintenance on a section of highway; however, this does not relieve the county from the ultimate obligation of ensuring that the maintenance is performed. The agreement for the performance of services is not an agreement for the transfer of jurisdiction. In other words, a maintenance agreement does not transfer jurisdiction.

A jurisdictional transfer will occur because it is either mandatory or agreed. A municipality annexing territory is mandated to assume jurisdiction of a township/road district highway within the annexed territory (65 ILCS 5/7-1-1 *et seq.*). Agreed-to jurisdictional transfers occur because of the logical need to transfer authority to another highway system. For example, relocating an existing State highway may result in decreased traffic occurring on the old State highway. Therefore, the old State highway may be better served under the jurisdiction of a county, municipality, or township/district road system.

It should also be noted that transfer of jurisdiction in itself does not involve transfer of ownership of the land. A separate process involving title work must be performed; see Section 5-2.05 of this Manual.

5-2.02 Jurisdictional Transfer Guidelines

605 ILCS 5/4-409 authorizes IDOT to enter into a written contract with any other highway authority for the jurisdiction of any highway or section of highway. IDOT may also, upon application of any highway authority, authorize the highway authority to enter into a written contract with any other highway authority for the jurisdiction of any highway or section of highway. IDOT is therefore required to be a party to all agreements involving the transfer of jurisdiction of a highway from one highway authority to another. If the transfer involves the State highway system, IDOT is one of the executors of the agreement. If the transfer is between two local agencies, IDOT is required to approve the transfer of jurisdiction.

All transfers of jurisdiction are accomplished in accordance with the BLRS publication, Jurisdictional Transfer Guidelines for Highways and Street Systems (2006). This publication is available on IDOT's website. Although the Jurisdictional Transfer Guidelines should be used as a general guide, each transfer will need to be evaluated on a case-by-case basis.

A highway authority may provide MFT or other local funds based on the present worth of the highway or structure to the highway authority that agrees to assume jurisdiction for the facility. The present worth is determined using the life-cycle cost of keeping the highway in a serviceable condition. The highway authority assuming jurisdiction of the roadway must deposit all present worth funds, regardless of source, into their MFT account.

5-2.03 IDOT Responsibilities

Jurisdictional transfers mandated by the State law do not require IDOT approval. Other jurisdictional transfers will require IDOT approval.

The Central BLRS is responsible for maintaining records of all jurisdictional transfers.

The Highway Systems Manager in the Central BLRS serves as the clearinghouse for all jurisdictional matters. In this capacity, the manager maintains documentation of all highway jurisdictional matters and reviews all documents requiring IDOT approval or clarification.

5-2.04 Processing of Jurisdictional Transfers

Central BLRS must be notified of all jurisdictional transfers. These transfers include both the mandated and agreed-to types. The district and the local agency are responsible for notifying Central BLRS of a jurisdictional transfer. It is strongly recommended that draft agreements for all proposed jurisdictional transfers be submitted to the Central BLRS for review prior to execution by the local agency(ies). The jurisdictional transfer agreements should contain the following items and any other items pertinent to providing a clear understanding between the parties in the transfer:

1. Conveyor/Recipient. The document should clearly indicate the highway authority conveying and the highway authority receiving the segment of highway involved.
2. Location Description. Provide a clear description of the highway and the beginning and ending points involved in the transfer. Use route numbers and local highway names. Include federal route numbers when available.
3. Length. Accurately measure the length of highway to be transferred to the nearest hundredth of a mile (hundredth of a kilometer).
4. Structures. Indicate and identify all structures to either be included or excluded in the transfer by their structure number. Any structure not excluded is considered a part of the jurisdictional transfer.
5. Illinois Statutes. The jurisdictional transfer should identify the State law that authorizes the legality of the transfer.
6. Other Information. Include any additional information that may assist in identifying the transfer. Jurisdictional transfers involving an improvement should include the applicable project number, State section number, local agency section number, contract number, etc.
7. Location Map. Include a map (minimum 8½" x 11" (216 mm x 279 mm)) to provide the location of the affected highway involved. The map should be legible and indicate the limits of the portion of highway to be transferred.
8. Resolutions and Ordinances. The State law requires that a resolution from the county and an ordinance from the municipality be executed for an agreed-to jurisdictional transfer.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Apr 2008

5-2(3)

9. Effective Date of Jurisdictional Transfer. Clearly define the date and method by which a jurisdictional transfer will take place.

Forms BLR 05210, BLR 05211, and/or BLR 05212 may be used for processing the transfer. It is strongly recommended that a draft agreement be submitted for review. Submit one original signature document of the final agreement to the district for each agency involved in the transfer.

5-2.05 Real Estate Transfers

605 ILCS 5/4-508 allows for the conveyance of any real estate interest from the State to another highway authority in conjunction with a past or present transfer of jurisdiction. The conveyance of any real estate interest from the State to another highway authority is not mandatory and must be mutually agreeable to both parties. Therefore, the State can transfer jurisdiction to another highway authority without the conveyance of any real estate interest. This conveyance can be part of the jurisdictional master agreement. For conveyance of land associated with a highway in which the jurisdiction has been previously transferred, a Letter of Intent between IDOT and the local agency is prepared to initiate the transfer; see Section 5-4. After concurrence of the concerned parties, a plat and legal description of the property to be transferred is prepared. If the transfer material is acceptable, the local agency must pass and execute the appropriate ordinances/resolutions to accept the transfer and submit five certified copies to the district. The transfer is then approved by the Secretary of Transportation.

No part of the transferred land can be vacated or disposed of without the approval of IDOT that may require compensation for non-public use.

For additional guidance on real estate transfers, see the IDOT Land Acquisition Policies and Procedures Manual.

5-3 JOINT AGREEMENTS

5-3.01 Joint Agreements Between State and Local Agencies

5-3.01(a) Requirements for a Joint Agreement

IDOT may enter into a joint agreement for maintenance, engineering, administration, or improvement of a highway with any other highway agency. A local-State agreement is required when local agencies are involved in projects that are financed in part with State and/or federal funds. A joint agreement is required for a project when one or more of the following conditions apply:

- The project involves planned improvements on the local highway system for which construction, engineering, utility relocation, and/or right-of-way acquisition will be paid totally, or in part, with State or federal funds.
- The project involves planned improvements on the State highway system for which the local agency is participating in the cost and/or any subsequent maintenance thereof on any phase of the improvement or in energy and/or maintenance costs of traffic signals or street lighting. If a highway is constructed to a greater width or of a different type than is required by IDOT, the local agency will be responsible for the excess cost (605 ILCS 5/4-404).
- The project involves planned improvements on the State or local highway system involving a jurisdictional transfer between the State and the local agency.

5-3.01(b) Agreement Content

For most projects involving Federal-aid and/or State funds, standard agreement forms (BLR 05310 or BLR 05311) should be used. These forms cannot be used if there are three or more parties to the agreement. Multiple parties may be included on standard agreements if one agency is designated as the lead agency. All transactions with IDOT will be with the lead agency. An Intergovernmental Agreement (IGA) should be prepared to specify payment and other responsibilities between the lead and additional local agencies.

If an individual joint agreement is required to be written, the agreement must clearly identify the responsibilities of each party. The agreement should incorporate the following items and any other items pertinent to providing a clear understanding between the parties relative to the project:

- Include the local agency name, MFT section number for each agency that is a party to the agreement, federal project number (for Federal-aid projects), and State job number.
- Provide a description of the work to be accomplished.
- Include a location description and location map.
- Identify who is responsible for the surveys, plan preparation, letting and awarding of the contract, and construction supervision of the work.
- Specify the method of construction (e.g., State-let contract, local-let contract, local agency day-labor forces).
- Note if a separate concurrence in the award of the contract is required.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-3(2)

Jan 2006

- Separate the division of cost by showing the funding responsibilities and the type of funds being used. Clearly identify any limiting amounts. Attach any supporting documentation (e.g., resolutions).
- Identify the method of payment and/or reimbursement by each party.
- Identify the specific Disadvantaged Business Enterprise (DBE) program being followed by the local agency.
- Identify who is responsible for any utility adjustments and disposition of encroachments.
- Note any parking restriction applicable to the project.
- Specify jurisdiction of the facility, both before and after construction.
- Specify who is responsible for maintenance after the project is completed.
- Specify who is responsible for maintenance and energy costs for traffic signals and/or street lighting.
- If a transfer of jurisdiction is involved, identify limits of the roadway included in the jurisdictional transfer and attach all necessary transfer documents in accordance with the BLRS publication, Jurisdictional Transfer Guidelines for Highway and Street Systems.
- Identify who is responsible for record retention during and after the project completion.
- Note the agreement expiration date and any other special conditions.

When the local agency desires to use one or more lump-sum amounts before the federal percentage is calculated, specify the order in which it should be used and the “not to exceed” amount. The following provides an example of the wording that should be used on BLR 05310 with regards to State Match or other funds:

- Lump-sum \$60,000 TARP funds not to exceed 50% of final cost of project credited to the project to be utilized first.
- Lump-sum to be utilized second not to exceed \$20,000 EDP funds.
- Lump-sum to be utilized third not to exceed \$40,000 State Match funds.

These specified amounts will be used in sequence, with the federal and local percentages calculated after they are deducted.

When the local agency desires to use a percent “not to exceed” commitment, the federal and State funds will be used concurrently at the specified percentages up to the “not to exceed” amount (e.g., 20% not to exceed \$40,000 State Match Funds).

Be advised that the “not to exceed” amount specified under a percentage commitment will be tied up and unavailable for programming until the project is closed out and audited by IDOT or FHWA, if required.

5-3.01(c) Draft Agreement

Draft joint agreements should be prepared for all projects. They will be reviewed by both the district and Central BLRS for those projects involving special funding or conditions that are not adequately addressed in the standard agreement format. The purpose of this review is to ensure that the improvement is compatible with the State highway system, the work is included in the State's Annual Construction Program, and right-of-way and other provisions in the proposed agreement are adequate to permit federal and/or State participation in the project. Comments and recommendations on the draft agreement will be provided for incorporation into the final agreement.

5-3.01(d) Final Agreement

A minimum of three original agreements by the appropriate local agency official(s) must be furnished to the district. Provide one additional original agreement for each local agency that is a party to the agreement.

If the improvement is on the State highway system, the joint agreement will be processed through BDE unless the project is being funded with Federal-aid funds allocated for improvements selected by local agencies. Agreements for these projects, as well as improvements on the local highway system, will be processed through BLRS.

There may be special cases where these procedures will need to be modified. Contact the appropriate bureau office for guidance.

The agreements should be signed by the chairman of the county board, mayor, or village president. If the agreement is signed by an appointed local official, the local official signing the agreement must be authorized to do so by resolution of the local governing body. This resolution should also be on file in the district office.

Since the highway commissioner has jurisdiction of its highways, the highway commissioner must also approve the expenditure of township road district funds, and the construction, repair, and maintenance of township roads within the road district.

A copy of the executed agreement is furnished to the local agency upon execution by IDOT. Copies are also sent to the district and all bureaus and agencies affected by the project.

5-3.01(e) Amendment to Federal-Aid Agreement

If a revision to the Division of Cost of the original joint agreement (BLR 05310) or any subsequent amendments is required, the local agency should use BLR 05311. BLR 05310 was not designed to function as an amendatory document.

All requirements of Section 5-3.01(c) and 5-3.01(d) should be addressed.

5-3.02 Agreement for County Engineer's Salary

When a county elects to transfer part of its Surface Transportation Program (STP) funds to IDOT in return for State funds to be used to pay a portion of its county engineer's salary, a joint agreement is needed. BLR 09220 can be used for this type of agreement.

This agreement will remain in force and effect for a period of 6 years from the date of execution unless terminated by either party upon 30 days written notification by either party. The agreement will be temporarily suspended during any period for which the county does not have sufficient STP funds available to be transferred.

5-3.03 Joint Agreements Between Local Agencies

605 ILCS 5/4-409 allows IDOT to authorize a highway authority to enter into a contract with another highway authority for the jurisdiction, maintenance, administration, engineering, or improvement of any highway.

5-3.03(a) Guidelines for an Agreement

When two local agencies are jointly constructing a highway improvement, a joint agreement between the local agencies is always advisable. In some circumstances, IDOT requires this joint agreement to be submitted for approval. In all other cases, one copy of an executed joint agreement should be submitted to IDOT for informational purposes. A joint agreement is required for a project when any of the following conditions apply:

- A municipality proposes to improve a municipal street extension that extends into another municipality (605 ILCS 5/7-202.3).
- A county proposes to improve a street (not a county highway) within a municipality with a population exceeding 500 persons to connect or complete a county highway within a municipality (605 ILCS 5/5-408).
- A municipality and a township propose a joint improvement (65 ILCS 5/11-85).
- A county elects to surrender its jurisdiction over the right-of-way and improvement of a county highway (65 ILCS 5/11-91.2 and 605 ILCS 5/5-410.1).
- When a county (ies) deems it necessary to make improvements of county line roads (605 ILCS 5/5-405) or to make improvements with adjacent counties (605 ILCS 5/5-406,407).
- Local agencies in adjacent States.
- When a municipality maintains a county highway within a municipality (605 ILCS 5/5-410).

5-3.03(b) Format

Clearly identify the responsibilities of each party. Address in the agreement any applicable items listed in Section 5-3.01(b) of this Manual. Also, address in the agreement any additional items that might be pertinent to ensure a clear understanding between the agencies executing the agreement.

5-3.03(c) Draft Agreement

Furnish a draft copy of the joint agreement to the district for review and comment if IDOT approval of the agreement is required. The purpose of this review is to ensure that the agreement is compatible with statutory requirements.

5-3.03(d) Signatures

The agreement should be signed by the chairman of the county board, mayor or village president, or highway commissioner, as appropriate. If an appointed local official signs the agreement, then the official must be authorized to do so by resolution of the local governing body. This resolution should also be on file in the district.

5-3.03(e) Distribution

When IDOT approval of the joint agreement is required, a minimum of four original agreements by the appropriate local agency official(s) must be furnished to the district. Provide additional original agreement if more than two local agencies are a party to the agreement.

A copy of the executed agreement is furnished to each local agency upon approval by IDOT. Copies are also furnished to the Central BLRS and all agencies affected by the project. When IDOT requires copies of the agreement for informational purposes only one copy of the executed agreement needs to be provided to the district.

5-3.04 Interagency Cooperative Agreements

The Intergovernmental Agency Act, 5 ILCS 220 allows any power, privilege, function, or authority that may be exercised by a public agency to be exercised, combined, transferred, or exercised jointly with another public agency. These contracts must be approved by the governing bodies of each participating agency. These agreements should reflect a sustaining working relationship between the agencies. It should emphasize the mutual benefits and costs and should not focus on one particular project. When the agreement involves functions that affect roads and streets, the agreement should be sent to IDOT for review.

5-4 LETTERS OF UNDERSTANDING/LETTERS OF INTENT

State improvements that do not involve local financial participation may at times be covered by Letters of Understanding. The Letter of Understanding can also cover local improvements with no State or federal participation. A Letter of Understanding may be used to delineate maintenance responsibilities (e.g., parking lanes, curbs and gutter flags, sidewalks, manholes, catch basins, storm sewers, traffic signals, utilities, appurtenances). Many of the provisions typically included in a Joint Agreement of Understanding should also be included in a Letter of Understanding (e.g., ordinances for sewer, parking, and encroachments; provisions for curb ramps and plan approval).

The district will prepare the Letter of Understanding. A brief description of the proposed project and description of the responsibilities of both parties must be included in the Letter of Understanding. The Letter of Understanding will be signed by the Regional Engineer, and transmitted to the local agency for the local official's signature.

5-5 ENGINEERING AGREEMENTS

5-5.01 General

Local public agencies (LPAs) may enter into an agreement with a professional design firm or a sole proprietorship meeting the requirements of 225 ILCS 325/23 to provide engineering services financed in whole or in part with Federal Aid (FA), State, Motor Fuel Tax (MFT), or Township Bridge Program (TBP) funds.

Funds will be limited to the amount of compensation called for in the agreement. These funds cannot be expended for payment of engineering services until an agreement has been submitted to, and approved by, the IDOT.

5-5.02 Types of Services

1. Project Specific. A contract between the LPA for the performance of services and defined scope of work related to a specific project.
2. Multiphase. A project-specific contract where the defined scope of work is divided into phases which may be negotiated and authorized individually as the project progresses.
3. Master Task Order. A contract for the performance of services On Call or Indefinite Delivery/Indefinite Quantity (IDIQ) under task or work orders issued on an as-needed or on-call basis, for an established contract period. The solicitation and contract provisions shall:
 - Specify a reasonable maximum length of contract period, including the number and period of any allowable contract extensions.
 - Specify a maximum total contract dollar amount which may be awarded under contract;
 - Include a statement of work, requirements, specifications, or other description to define the general scope, complexity, and professional nature of the services.

5-5.03 Length of Services

The maximum term including extensions of the engineering services contract may not exceed 10 years. However, the length of the contract should be determined based on the scope of work. The LPA shall comply with any established Illinois statutory or local ordinance that further limits the length of a contract.

5-5.04 Conflict of Interests

It is important to understand that conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). Additionally, the appearance of a conflict of interest should be avoided, as an apparent conflict may undermine public trust if not sufficiently mitigated.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(2)

Nov 2012

Conflict of interest requirements include but are not limited to the following:

1. The requirement that no LPA elected official, officer, or employee who participates in the procurement, management, or administration of engineering services contracts or subcontracts shall have, directly or indirectly, any financial or other interest in connection with such engineering contracts or subcontracts. For instance, a county may not enter into a contract with a professional design firm if the county engineer is also a member of that professional design firm.
2. The requirement that no person or entity performing services for a LPA shall have, directly or indirectly, any financial or other interest in any real property acquired for the project.
3. The person or entity performing services for a LPA may perform design and construction engineering/management and/or inspection on the same project provided the LPA has established the necessary controls and provides sufficient oversight to ensure that a conflict of interest does not exist, or has approved procedures to mitigate any conflict or potential for a conflict. Prior to allowing a person or entity to provide engineering services on multiple phases of a project, the LPA shall evaluate that their policies, procedures, and practices associated with the procurement, management, and administration of engineering consultant services comply with Federal and State laws and FHWA requirements.

A person or entity performing construction engineering/management and/or inspection services on the same project on which the person or entity also performed design services provides the person or entity an opportunity to influence or affect project decisions on scope changes, design changes, construction revisions, contract change orders, and other related issues. This may result in project delivery efficiencies, as the person or entity that designed the project is well-suited to verify that the project is being constructed in accordance with the design and may resolve issues related to the design on behalf of the contracting agency. However, procuring a different person or entity other than the professional design firm or a sole proprietorship to provide the necessary construction engineering/management and/or inspection services provides another level of review and reduces the potential for a conflict of interest.

5-5.05 Retainage

The LPA shall not withhold retainage on FA funded engineering agreements. The LPA may withhold retainage on MFT, state, or TBP funded engineering services agreement. However, withholding retainage provides no substantial benefits to the LPA.

5-5.06 Qualification Based Selection for Consultant Engineering Services

5-5.06(a) Introduction

The principal objective of the Qualification Based Selection (QBS) procedures is to allow a LPA to locate a qualified professional design firm or a sole proprietorship to undertake the project; then, through negotiations, engage the professional design firm or a sole proprietorship to provide the creative and technical work required at a fair and reasonable cost. The area and magnitude of responsibility in the process can vary widely according to project type.

5-5.06(b) Applicability

The procurement procedures outlined in Section 5-5.06(c) of this Manual apply to the selection of all engineering services based on the following funding type parameters:

1. State, MFT or TBP Funded Engineering Services. QBS procedures for public notice, evaluation, selection, and contract negotiations shall be used whenever a project requiring architectural, engineering, or land surveying services is proposed for a LPA of fewer than 3,000,000 inhabitants, except home rule units, unless the LPA has a satisfactory relationship for services with one or more firms (50 ILCS 510). See Section 5-5.06(c).

A LPA may waive the requirements of public notice, evaluation and selection if the LPA determines, by resolution, that an emergency situation exists and a professional design firm or a sole proprietorship must be selected in an emergency manner, or if the total cost of services from an individual professional design firm or sole proprietorship is estimated to be less than \$25,000 (50 ILCS 510/8). If the LPA estimates the total cost of services will be less than \$25,000, IDOT will not approve any agreement or supplemental that exceeds the \$25,000 threshold unless the LPA used QBS.

2. FA Funded Engineering Services. LPAs shall use QBS (The Brooks Act, 40 USC 11) to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications for the type of engineering and design related services being procured, and at a fair and reasonable price. See Section 5-5.06(c).

If the total cost of all engineering services from an individual engineering firm is estimated to cost \$100,000 or less, the local public agency shall follow the applicability requirements in Section 5-5.06(b)(1). The District BLRS may approve the LPA to exceed the \$100,000 limit up to \$150,000. If the total cost of all contracts for the engineering services including any supplemental changes exceeds \$150,000, all FA funds on engineering services contracts not using QBS become ineligible and the LPA will be required to refund any FA funds used for the engineering services.

If an individual firm is selected to work on multiple phases of a project, the dollar limits apply to the total combined cost of all phases. If the LPA selects an engineering firm for one phase using QBS and the LPA included an option to perform one or more other phases as part of the original solicitation, the LPA is then not required to conduct another QBS unless there is cause to select a different consultant for subsequent phases.

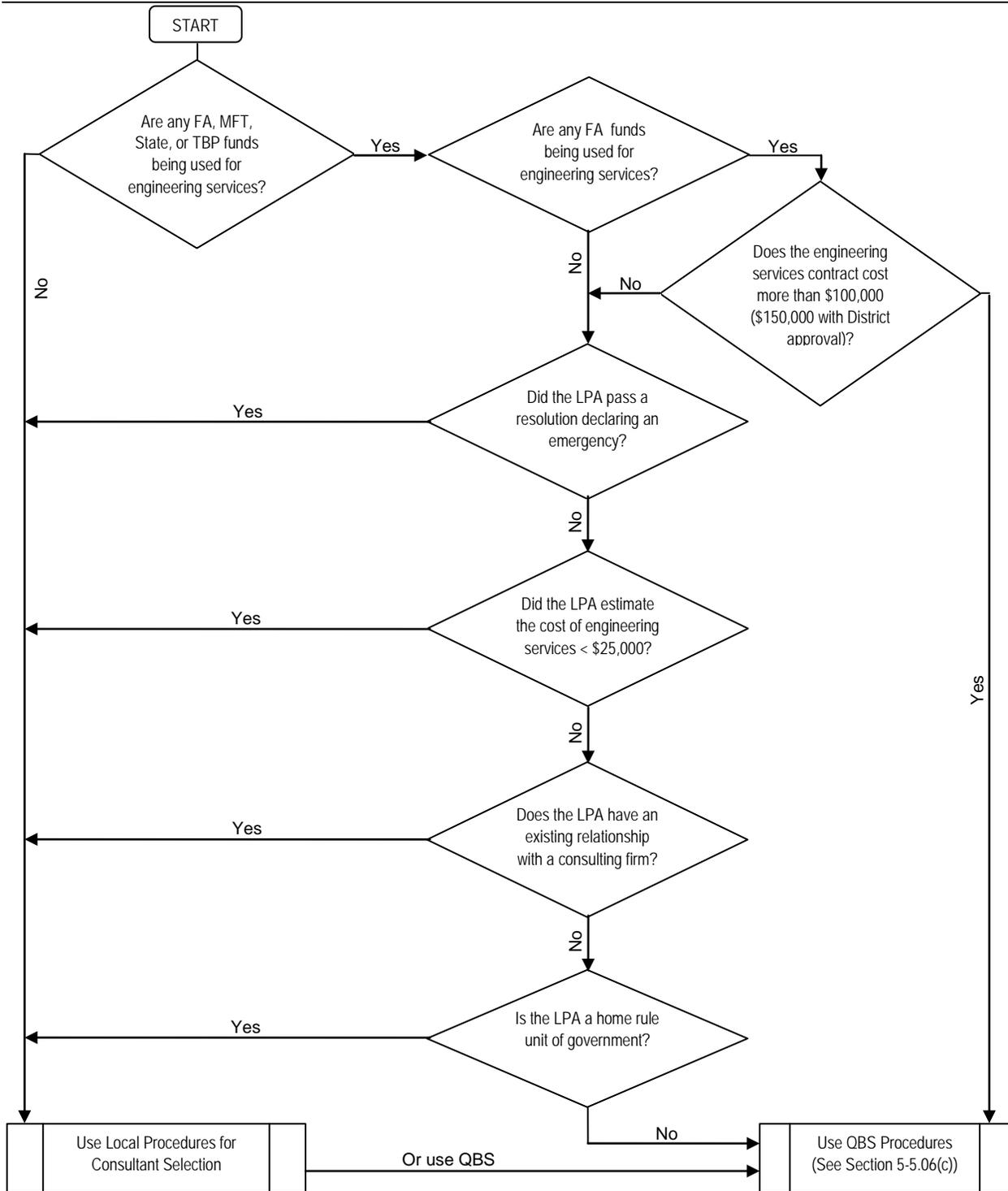
3. Locally Funded Engineering Services. The IDOT does not have oversight over contracts for engineering services funded entirely with local funds. However, it is recommended the QBS procedures contained in Section 5-5.06(b)(1) be followed.

The procurement method used for selection of engineering services will not impact funding for the construction of a project.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(4)

Nov 2012



REQUIREMENT FOR QBS

Figure 5-5A

5-5.06(c) Basic Steps for QBS

The procedure for QBS procurement consists of the following five basic steps:

1. Define the Project. Clearly define the scope of the services desired. Depending on the amount of data, this may be on one or more pages. This information should include the following:
 - describe in general terms the need, purpose, and objective of the project;
 - identify the various project components;
 - establish the desired timetable for the effort;
 - identify any expected problems; and
 - determine the total project budget.

A comprehensive evaluation of the problem or need that resulted in the project is essential to the procurement process. The solution, approach, and eventual design for the project will evolve out of the expertise offered by the professional design firm or sole proprietorship responding to the request for technical proposals. To ensure that the respondents address the project properly and effectively, clearly articulate all known parameters of the project.

The LPA may skip to Step 5 when both of the following criteria are met.

- The LPA elects to select an professional design firm or sole proprietorship that has a satisfactory working relationship with the LPA; and
 - The engineering services contract is being paid for using State, MFT, or TBP funds; or, the engineering services contract is being paid for using FA funds and is estimated to cost \$150,000 or less (see Section 5-5.06(b)(2)).
2. Public Notice. Whenever a project requiring engineering services is proposed, the LPA shall mail a notice requesting a statement of interest to potential professional design firms or sole proprietorships, or place an advertisement in a local newspaper requesting a statement of interest along with the qualifications and performance data from professional design firms or sole proprietorships.

Consider the following sources when preparing a list of potential firms:

- identification of prequalified professional design firms or sole proprietorships from the local agency's or IDOT's file;
- a directory or source list identifying small, minority, and women owned businesses with capabilities relevant to the project;
- discussions with other persons or agencies who have accomplished similar work;
- lists of professional design firms or sole proprietorships secured from professional societies; and/or
- lists of professional design firms or sole proprietorship secured from the agency's own experience of designated professional design firms or sole proprietorships.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(6)

Nov 2012

3. Evaluation. The LPA shall evaluate the professional design firm or sole proprietorship submitting letters of interest, taking into account qualifications, ability of professional personnel, past record and experience, performance data on file, willingness to meet time requirements, location, workload of the professional design firm or sole proprietorship, and such other qualifications-based factors. The first objective of evaluation is the elimination of all respondents who are not qualified or who do not have the experience for the required work. The LPA may conduct discussions with and require presentations by professional design firms or sole proprietorships deemed to be the most qualified based on their qualifications, approach to the project, and ability to furnish the required services. When conducted, interviews shall occur separately with a minimum of three professional design firms or sole proprietorships, or all qualified professional design firms or sole proprietorships if less than three qualified professional design firms or sole proprietorships respond.

In no case shall the LPA, prior to selecting a professional design firm or sole proprietorship for negotiation, seek formal or informal submission of verbal, written, or sealed estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation.

4. Selection. On the basis of evaluations, discussions and presentations, the LPA shall select no less than 3 professional design firms or sole proprietorships which it determines to be the most qualified to provide services for the project and rank them in order of qualifications to provide services regarding the specific project. The LPA shall then contact the professional design firm or sole proprietorship ranked most preferred and attempt to negotiate a contract at a fair and reasonable compensation, taking into account the estimated value, scope, complexity, and professional nature of the services to be rendered. Typical criteria for evaluating and ranking professional design firms or sole proprietorships are included in Figure 5-5B. If fewer than 3 qualified professional design firms or sole proprietorships submit letters of interest and the LPA determines that one or both are so qualified, the LPA may proceed to negotiate a contract.

5. Contract Negotiation. The LPA shall prepare a written description of the scope of the proposed services to be used as a basis for negotiations and shall negotiate a contract with the highest qualified professional design firm or sole proprietorship at compensation that the political subdivision determines in writing to be fair and reasonable. In making this decision, the political subdivision shall take into account the estimated value, scope, complexity and professional nature of the services to be rendered.

An important objective of the negotiation process is to reach a complete and mutual understanding of the scope of professional services to be provided and the degree of performance desired. The general scope of professional services developed in the procurement process should be broad in order to serve as the basis for negotiation. The negotiation process offers the opportunity for refinement, amendment, and complete definition of the services to be rendered, as well as the areas of responsibility and liability for those services. Mutual understanding on these points at the negotiation stage can minimize the possibility of misunderstanding as the project progresses.

Special elements of the engineering portion of the project to be established during negotiation include:

- project schedule,
- manpower requirement and timing,
- level of engineering effort,

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Nov 2012

5-5(7)

- avenues of research, and
- areas of responsibility/liability.

Any percentage fee contract should be fully supported by an acceptable estimate of man-hours, anticipated hourly payroll rates by classification of employee for the project, and applicable overhead and burden rates. These rates should be evaluated and, if determined to be acceptable, the percentage fee may be approved by the district.

The professional design firm's or sole proprietorship's method of dividing the project into work units and calculating related time units are to be such that the estimate can be readily reviewed. The professional design firm or sole proprietorship will use its own estimates of man-hours, rates of pay, overhead, profit, and itemized non-salary costs based on the professional design firm's or sole proprietorship's work force and past job experience.

When the prime consultant requires the services of another consultant to provide expertise, advice, or information to the prime consultant, the prime consultant will complete an analysis of fee for engineering services (including a breakdown of direct salary and direct non-salary costs) or supply specific rate for services (e.g. testing). The consultant is responsible for ensuring that DBEs will have an equitable opportunity to compete for subcontracts. See Section 24-2 for information on DBEs for local agencies.

Contracts between local agencies and professional design firms or sole proprietorships must be set forth in fully executed agreements. If there is an agreement with the professional design firm or sole proprietorship, and if the fee is within range of the budget, proceed to finalize an agreement. If problems arise with the scope of the project or the fee, further discussion and clarification may be required.

Selection of a professional design firm or sole proprietorship by qualification provides no guarantee that the local agency and the professional design firm or sole proprietorship will come to an agreeable fee. For that reason, the ranking process provides, in addition to the first preference, at least two alternative qualified professional design firms or sole proprietorships. If agreement cannot be reached on the scope and fee, the local agency may drop negotiations with the top-ranked professional design firm or sole proprietorship and continue the process with the second ranked professional design firm or sole proprietorship at Step 5.

6. Summary. Ranking and negotiations involve a considerable amount of subjective judgment. Because engineering projects involve a large expenditure of public funds, accountability for decisions and value judgments is most important. To ensure adequate accountability:
 - involve more than one knowledgeable person in the evaluation process,
 - be consistent in reviewing each applicant,
 - keep accurate and complete records of all correspondence, memoranda, evaluations, and decisions.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(8)

Nov 2012

The primary purpose of undertaking the QBS process is to locate the most qualified professional design firm or sole proprietorship to do the work and negotiate a fair and equitable agreement. Federal and Illinois law limits the selection of professional design firm or sole proprietorship by using cost except for small dollar contracts. The selection shall be based on the professional design firm's or sole proprietorship's experience and expertise in projects of the same type as proposed.

The weight given to each evaluation criterion in the ranking process may vary from project to project, with more weight towards the criteria that are critical to the success of the project. Typical technical criteria for both evaluating and ranking entities should include but not be limited to the following:

1. The education, experience, and expertise of the entity's principals and key employees.
2. The entity's general experience, stability, and history of performance on projects similar to the one under consideration.
3. Availability of adequate personnel, equipment, and facilities to do the required work expeditiously.
4. The name, or names, of individuals in the entity who will be assigned key project responsibilities, with particular attention to their qualification, competence, and past performance.
5. The entity's approach to the planning, organizing, and management of a project effort, including communication procedures, approach to problem solving, data gathering methods, evaluation techniques, and similar factors.
6. Facilities and equipment owned by the entity, including computer capability, reproduction and communication equipment, laboratory and testing equipment, or other specialized equipment applicable to the project under consideration.
7. Present workload with attention to current and future commitments of available personnel, particularly those key persons expected to be assigned to your project.
8. Financial stability, with particular attention to avoiding a situation in which the entity is solely dependent on income from the project at hand for its existence.
9. Recommendations and opinions of each entity's previous clients as to its ability to meet deadlines and remain within budget. Prior clients may also be able to advise you as to each entity's sense of responsibility; attitudes of key personnel; concern for economy, efficiency, and environment; and quality of service.
10. If practical, observation of each entity's facility and the sites of current and/or completed projects.
11. The reputation and integrity of the engineering entity within the professional field and the community.
12. Awards received by the entity and technical papers authored by employees.
13. Special considerations for some projects might include staff conversant in foreign languages.

Non-technical criteria may not exceed 10% of the total evaluation and rank weighting. Typical non-technical criteria for both evaluating and ranking entities may include but not be limited to the following:

1. Proximity of the engineering entity to the proposed project site and/or the agency's office.
2. Qualified minority representation.
3. How DBE goals are addressed.
4. The local agency has worked with a specific entity and can cite any or all of the following advantages:
 - The entity's personnel are acquainted with the agency's organization and local conditions.
 - Information from the files of past assignments is of great importance.
 - Compatibility with agency organization is assured.
 - A smooth start-up and satisfactory progress will result because both parties will be dealing with known factors

CONSULTANT RANKING CRITERIA

Figure 5-5B

5-5.07 Standard Engineering Services Agreements

While use of standard engineering agreement forms is not required, the LPA should use the standard engineering agreements developed by the department in order to ensure compliance with all federal and state requirements. If a standard engineering agreement form is modified, the department logo, form number, and any other department identifier shall be removed. Separate engineering agreements are required for preliminary and construction engineering services.

The following standard agreement forms are provided by Central BLRS:

- Form BLR 05510 – Engineering Services Agreement
- Form BLR 05520 – Maintenance Engineering to Be Performed by a Consulting Engineer
- Form BLR 05530 – Request for Construction Engineering Services Performed by Local Forces

5-5.07(a) Form BLR 05510

Form BLR 05510 provides a standard agreement form for preliminary engineering and construction engineering using FA, state, MFT, or TBP funds. Form BLR 05510 provides for compensating the consultant for all work based on methods of payment outlined in Section 5-5.09. The agreement must contain a maximum amount payable, which cannot be exceeded without modification of the agreement.

1. Preliminary Engineering. Preliminary engineering is divided into two phases. Phase I includes preparation of the environment documents, project development or design report, bridge condition reports, and preliminary bridge design and hydraulic report (with TS&L as required). Phase II includes preparation of the plans, specifications, and estimates. The work covered by Phase shall not begin until Phase I has been completed and design approval has been given by IDOT.

For FA funded preliminary engineering services agreements, the LPA shall award a construction contract or acquire right-of-way within 10 years of the federal authorization date of the preliminary engineering services agreement unless an extension has been granted by FHWA. The IDOT Bureau responsible for individual FA program categories may have more stringent requirements; therefore, the LPA should review all program requirements when requesting funds.

2. Construction Engineering. Construction engineering by the consultant may include the duties of the Resident Construction Supervisor and/or construction inspection. The LPA shall remain in responsible charge. Requirements for construction supervision and in responsible charge are contained in Section 13-2.01 and Section 25-1.02 of this manual.

5-5.07(b) Form BLR 05520

LPAs may enter into an agreement with professional design firm or sole proprietorship to provide engineering services for maintenance work funded in whole or in part with MFT funds. Formal agreements may include preliminary engineering and/or engineering inspection.

Typically, the professional design firm or sole proprietorship is responsible for the following duties during preliminary engineering:

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(10)

Nov 2012

- investigation of the condition of the streets and/or structures;
- determination, in consultation with the local officials, of the maintenance operations to be included in the maintenance program;
- preparation of the maintenance resolution, estimate, and proposal;
- attendance at meetings of the governing body as may reasonably be required;
- attendance at the public letting and preparation of the contract or acceptance of proposal forms; and
- preparation of the maintenance expenditure statement.

For engineering inspection projects, the professional design firm or sole proprietorship is usually responsible for the following:

- furnishing the engineering field supervision of maintenance operations requiring professional on-site inspection;
- checking materials invoices for payment; and/or
- preparing the payment estimate for contract maintenance, including any necessary changes-in-plans, and providing a final estimate of the contract maintenance cost.

Form BLR 05520 may be used for maintenance preliminary engineering and/or engineering inspection agreements. The agreement requires the signature and seal of the licensed professional engineer, or structural engineer as applicable, and the signature and title of the local official. Attach the formal agreement to the maintenance documents submitted to the district for approval showing the estimated cost of maintenance and the operations requiring engineering inspection.

5-5.07(c) Form BLR 05530

If FA funds will be requested to pay for construction engineering provided by the LPA, Central BLRS approval is required. The department is required to pre-audit all projects receiving federal funding in accordance with applicable federal regulations. Any services performed prior to the approval from the department may jeopardize the eligibility of federal funding reimbursement. Any invoices submitted for reimbursement for services performed by a LPA will not be processed for payment until a request for a pre-audit and approval is submitted to the Central BLRS.

5-5.08 Other Engineering Services Agreements

5-5.08(a) Road District Engineering and Administration

605 ILCS 5/6-701.3 allows for a County to be paid administrative and engineering costs for road district MFT construction and maintenance. Engineering and administrative work may be performed on either an actual cost or a fixed-percentage basis, or a combination of these methods. The following will apply:

1. Work Force. This work may be done by one, or an approved combination, of the following:

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Nov 2012

5-5(11)

- a. by the county with its own forces, with payments to be made directly from MFT funds on an actual cost basis;
 - b. by the county with its own forces, with payments to be made on a percentage basis, as determined and agreed on by and between the county and the road district and approved by IDOT; and/or
 - c. by a consulting engineer under agreement with the county and approved by IDOT.
2. Resolution. The county board will adopt a resolution informing IDOT of the method or methods it proposes to use. The resolution must include the following:
- a. Identify the method or methods of performing the work and the program(s) to which it is applicable (e.g., MFT Construction, MFT Maintenance, Township Bridge Program).
 - b. If method 1(b) above is used, include the rate of compensation to be applied to each application.
 - c. Provide the effective date of the resolution.
 - d. Note the supersedure of any preceding resolution.
3. Approval. Submit two originals of the resolution to the Regional Engineer for approval.
4. Renewal. Annual formal agreements are required for road district maintenance where the county is not performing the engineering services with its own forces; see Section 5-5.08(b) of this Manual.

5-5.08(b) Inspection and Testing Services

LPAs may enter into an agreement with professional design firm, sole proprietorship, or a testing company authorized to do business in the State of Illinois as a "Testing Laboratory" to provide inspection services for projects financed in whole or in part with MFT funds provided the costs will be assigned to the MFT project for which the testing is being done. The professional design firm, sole proprietorship, or a testing company shall have the appropriate prequalification and training.

Formal agreements may include the following:

1. Scope of Services. This may include:
 - a. obtaining samples for inspection,
 - b. material testing,
 - c. reporting results,
 - d. obtaining material certification, and/or
 - e. providing proof that the materials concerned meet the requirements of the appropriate specifications.

This work should be performed in accordance with IDOT's Project Procedure Guide and with IDOT's QC/QA Program, where applicable.

2. Method of Measurement. The method of measurement will be based on the services to be performed. Methods of measurement will be in accordance with standard test methods, IDOT's Manual of Test Procedures for Materials, and good engineering practices. Pay rates may be based on units of measurement. The following are some units that may be used:

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(12)

Nov 2012

- a. plant proportioning control, ton or yd³ (metric ton or m³);
- b. in-place density determination, hourly rate;
- c. flexural strength tests, each;
- d. Marshall tests, each;
- e. mix design, each;
- f. core drilling, ft (m);
- g. soil reports, per hour laboratory time;
- h. structural steel shop inspection and testing, hourly rate.

5-5.08(c) Non-Standard Engineering Services Agreement Required Clauses

The following clauses shall be included in all non-standard engineering services agreement for preliminary and/or construction engineering:

1. Services. Define the services to be performed.
2. Contract Length. Identify the section or time period covered by the agreement.
3. Compensation. Include the amount and type of compensation to be paid to the consultant. Where the major portion of services is to be provided on a cost-plus basis, provide a list of personnel by occupational title or professional class and the rate of pay for each. If the principal engineer or other consultant's employee perform routine services (e.g., field material inspection, detailed inspection, standard design, drafting work) that could be performed by lesser salaried personnel, the wage rate billed directly for these services cannot exceed those rates paid to the consultant's salaried personnel performing the same or similar work.
4. Payment. Identify the time schedule at which payments are to be made.
5. Non-discrimination. Include the standard clauses for non-discrimination and fair employment practices.

For FA funded engineering services agreements, all required clauses contained in 23 CFR Part 172 shall be included.

5-5.09 Method of Payment

5-5.09(a) Compensation Formulas

The following costs are used in one or more of the compensation formulas:

- Direct Labor - the professional design firm or a sole proprietorship's direct salary cost, which is the salary expense for professional and technical personnel and principals for time that they are productively engaged in work necessary to fulfill the terms of the agreement;
- In-House Direct Costs - the professional design firm or a sole proprietorship's non-labor costs identified with a particular project. Form BDE 436 shall be used to submit eligible items;

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Nov 2012

5-5(13)

- Overhead - The professional design firm or a sole proprietorship's actual overhead factor (including payroll additives) or a negotiated overhead factor;
Note(s): 1. A negotiated overhead factor may only be used on MFT, state, and TBP funded projects. The maximum negotiated overhead factor is 1.4.
2. Field Rates shall be used for construction engineering projects expected to exceed one year in duration or if the construction engineering contract exceeds \$1,000,000.00 for any duration.
- Outside Direct Costs – the professional design firm or a sole proprietorship's outside project costs performed by vendors (i.e. outside printing costs, etc)
- Service By Others – the professional design firm or a sole proprietorship's services performed by a sub-consultant (i.e. another engineering firm, lab testing firm, landscape architect, etc.)

The engineering agreement will be negotiated based on one of the following methods of compensation. The compensation method selected for the prime consultant shall be used by any sub-consultant, with the exception of construction engineering agreements, when a specific rate is allowed for testing services.

1. Lump-Sum. Lump-sum compensation may be used for engineering services contracts less than \$20,000. For FA funded engineering services agreement, the lump sum shall be developed using CPFF formula.
2. Specific Rate. Specific rate compensation may be used only for small engineering services contracts less than \$150,000 and where the work can be clearly defined (e.g., testing). The rate includes payroll, overhead, and profit.
3. Cost-Plus-a-Fixed-Fee Amount (CPFF). CPFF compensation is used when the estimate of the work, labor, and other expenses required for its execution cannot be accurately estimated by local agency personnel in advance.

The fixed fee allows for the professional design firm or a sole proprietorship's profit and other miscellaneous amounts. The fixed fee is based on the initial contract estimate.

Note: The fixed fee may be renegotiated when significant changes in the scope, complexity, character, or duration of work are warranted.

One of the following fixed fee formulas shall be used:

$$FF = 0.145[DL + R(DL) + OH(DL) + IHDC]$$

$$FF = 0.145[DL + R(DL) + 1.4(DL) + IHDC]$$

$$FF = 0.145[(2.3 + R)DL + IHDC]$$

Where:

- DL = Direct Labor
- IHDC = In-House Direct Costs
- OH = Overhead
- R = Complexity Factor

The total compensation of the professional design firm or a sole proprietorship shall use the following formula:

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-5(14)

Nov 2012

$$CPFF = DL + IHDC + OH(DL) + FF + ODC + SBO$$

Where:

DL	=	Direct Labor
IHDC	=	In-House Direct Costs
OH	=	Overhead
FF	=	Fixed Fee
ODC	=	Outside Direct Costs
SBO	=	Service by Others

The final total CPFF compensation for construction engineering services may not exceed 15% of final construction costs.

Lump Sum, Specific Rate, CPFF or the following compensation formulas may also be used for State, MFT, or TBP funded engineering services contracts:

1. Direct Labor Multiplier (DLM). The DLM method of compensation allows every consultant a different percentage of profit depending on the level of a firm's overhead. The DLM formula is:

$$DLM = [(2.80 + R) \times DL] + IHDC$$

See CPFF for definitions of DLM pay factors.

2. Actual Costs. The actual costs of services plus a specified percentage for overhead.

For State, MFT, or TBP funded engineering service contracts on LPA maintenance projects, the compensation may be as shown in Figure 5-5C.

Note: If Lump Sum or Actual Costs is used, the total engineering cost cannot exceed the amount determined under Base Fee.

Preliminary engineering fees for MFT maintenance projects are applied to the total approved estimated cost of each MFT maintenance operation included in the MFT maintenance estimate except MFT maintenance engineering. The MFT engineering inspection fee is applied to the final cost of those MFT maintenance operations inspected by the engineer. If retainage is used on MFT maintenance engineering, 10% of the total fee is withheld until the final cost of inspected items is known and the final payment estimate and/or final documents and the MFT maintenance expenditure statement have been submitted.

BUREAU OF LOCAL ROADS & STREETS

Nov 2012

AGREEMENTS

5-5(15)

BASE FEE		
Value of Program ≤ \$20,000	Negotiated (\$1,250 Maximum)	
Value of Program > \$20,000	\$1,250	
PLUS		
Group*	Preliminary Engineering (Maximum Fee (%))	Engineering Inspection (Maximum Fee (%))
I	N/A	N/A
II-A	2%	1%**
II-B	3%	3%
III	4%	4%
IV	5%	6%

* *Group Definitions:*

Group I. Services purchased without a proposal such as electrical energy or materials purchased from Central Management Services' Joint Purchasing Program (www.purchase.state.il.us) or another joint purchasing program that has been approved by the District BLRS or Central BLRS.

Group II-A. Routine maintenance or maintenance items that do not require competitive sealed bids according to Section 12-1.02(a) or a local ordinance/resolution.

Group II-B. Routine maintenance items that require competitive sealed bids according to Section 12-1.02(a) or a local ordinance/ resolution. Routine maintenance includes all items in the following work categories: snow removal, street sweeping, lighting and traffic signal maintenance, cleaning ditches or drainage structures, tree trimming or removal, mowing, crack sealing, pavement marking, shoulder maintenance, limited amounts of concrete curb and gutter repair, scour mitigation, pavement patching, and minor drainage repairs.

Group III. Maintenance items that are not covered by Group IIB and require competitive bidding with a material proposal or a deliver and install proposal.

Group IV. Maintenance items that are not covered by Group IIB and require competitive bidding with a contract proposal.

** An Engineering Inspection Fee for Group IIA is only allowed for items that require inspection and/or acceptance testing.

FEE FOR MAINTENANCE ENGINEERING

Figure 5-5C

5-5.09(b) Efficiency Factor.

The consultant may also opt to include an efficiency factor. When provided in an agreement, the consultant has the opportunity to share in any direct labor cost savings achieved by the efficiencies of the consultant from the original direct labor estimate. Upon submission and approval of the final bill, when the negotiated direct labor cost upper limit is not reached, the consultant will be entitled to 1% of the remaining funds.

An efficiency factor may also be applied to those contracts using the cost plus fixed fee method. When the contract's direct labor cost upper limit is not reached, the consultant will receive 1% of the difference between negotiated and actual direct labor plus overhead.

5-5.09(c) Complexity Factor.

Figure 5-5D presents a description for the various levels on the complexity of work.

R Value	Complexity of Work
CPFF = 0.0 DLM = 0.0	Low complexity projects that involve such work as project surveys, routine drafting functions, minor simple span bridges, small rural projects, project reports, and simple environmental assessments.
CPFF = 0.035 DLM = 0.003	Complex jobs that involve such work as small urban projects, freeway interchanges, projects on new alignment, freeways, multi-span continuous bridges, complex environmental assessments, and design reports.
CPFF = 0.070 DLM = 0.008	Very complex work that involves such work as multi-level interchanges, movable bridges, complex major bridges, major urban freeways, complex design reports, environmental impact statements, and major engineering studies requiring special expertise.

COMPLEXITY FACTOR

Figure 5-5D

5-5.10 Agreement Processing

Once the LPA and the professional design firm or sole proprietorship have agreed on scope, terms, and compensation, the engineering agreement shall be submitted to the District BLRS for review.

1. MFT, State, and TBP Funded Engineering Services Agreements. The District BLRS will provide approval to the LPA.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Nov 2012

5-5(17)

2. FA Funded Engineering Services Agreements. The District BLRS will provide an initial review and then submit to the Central BLRS for processing.

Central BLRS will request the IDOT Bureau of Accounting and Auditing to review the payroll rates to ensure acceptability. Records of the professional design firm or sole proprietorship will be reviewed to establish an approved overhead rate if one has not already been established.

For construction engineering services agreements, the Form BC 775 (and Form BC 776 if required) shall be completed by the LPA and approved by the IDOT District prior to pre-construction meeting. Failure to attach these forms to the FA funded construction engineering services agreements may result in delay in IDOT approval.

After all internal IDOT sign offs have been received, the Central BLRS will request federal authorization. Once federal authorization is received, the Central BLRS will issue a notice to proceed. If the LPA allows the professional design firm or sole proprietorship to perform any work and/or costs to be incurred prior to federal authorization and approval by the IDOT, the work and/or costs will not be eligible for federal reimbursement and will not be allowed as a match to the FA funds. The LPA proceeds at their own risk with the understanding that if the IDOT approval is not obtained, FA, State, MFT, and/or TBP funds will not be allowed for the engineering services contract.

5-5.11 Supplements to the Agreements

When the consultant is requested to complete work outside the scope of the original agreement, the local agency must provide a written supplement to the original agreement. This may be done by a letter supplement. Where applicable, the local agency should:

- Review the original agreement prior to negotiation of any proposed supplemental agreement.
- Provide a statement to the district explaining the reasons that the original agreement will be supplemented to add/change/amend conditions.
- Describe the scope of work in sufficient detail to clearly outline the additional work that the consultant is to do.
- Include the mode of payment (e.g., cost plus a fixed fee, specified hourly rate, daily rate, any indirect cost). This mode of payment must be the same as the original agreement. Always include a maximum amount payable.
- Specify a time for beginning and completion of the contract. Be specific (e.g., calendar days, specified day of the year).
- Specify if subletting is authorized; if so, specify to whom, for what, and the amount payable.
- Attach, as exhibits, a finance summary of estimated costs of the supplement(s). Include only the costs to be incurred by the additional scope of work.

Provide spaces for the consultant and the local agency to sign the letter supplement. Ensure that both parties to the agreement have the authority to act and the supplement does not exceed any dollar threshold contained in Section 5-5.06(b). The supplement will require IDOT approval.

5-5.12 Administration of the Agreement

5-5.12(a) Project Administrator

The LPA is responsible for assigning one of its personnel as project administrator to work with the professional design firm or sole proprietorship. The project administrator will conduct the following:

- Prepare supplements and letter supplements to existing professional design firm or sole proprietorship agreements for additional services or services beyond the scope of the work of the original agreement, and include the LPA's estimate of the costs for the work involved.
- Perform as liaison between the local agency and the professional design firm or sole proprietorship to ensure compliance with the terms of the agreement and with regard to the work performed by the consultant.
- Monitor the professional design firm's or sole proprietorship's progress reports to ensure that problem areas are reported and corrective action is taken.
- Establish controls to monitor time for completion of each agreement to ensure that the time limitations are not exceeded.
- Ensure the accuracy of bills presented by the professional design firm or sole proprietorship and submit the bills to the district for reimbursement.
- Maintain cumulative cost records for each agreement.
- Establish controls to prevent payment in excess of contract limitations.
- Monitor the professional design firm or sole proprietorship to ensure compliance with any and all Equal Employment Opportunity provisions of the agreement.

5-5.12(b) Final Check

Upon completion of the work under the consultant agreement, the local agency will ensure that all terms and conditions of the agreement have been complied with and that all services to be performed under the agreement have been completed prior to final release of the professional design firm or sole proprietorship.

The agreement will be terminated in writing by the local agency. A copy of any termination should be sent to the district.

5-5.12(c) Project Closeout

The local agency is responsible for ensuring that all terms and conditions of the engineering agreement have been fulfilled and that all services to be performed under the agreement have been completed. For state let projects with construction engineering services contracts, all project closeout documentation required by the Bureau of Construction Procedure Memorandum 10-79 shall be submitted to the District Bureau of Construction prior to the construction engineering services contract being closed out by the District.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Nov 2012

5-5(19)

Documentation (e.g., itemized cost lists, time cards, payroll ledgers, related bills, cancelled checks) to support invoiced engineering costs shall be included in all invoice submissions. The LPA shall comply with all required retention schedules established for LPAs by the Secretary of State. For department auditing purposes, copies (electronic copies are suitable) of all invoices and supporting documentation shall be retained for a period of 3 years after payment of the final voucher. The following applies:

1. MFT and TBP Funded Engineering Services. The LPA shall submit Form BLR 13510 upon completion of the project if MFT or TBP funds are used to fund any portion of the engineering services.
2. State Funded Engineering Services. The LPA shall submit to IDOT a final invoice for the agreed compensation incurred, in accordance with the approved agreement and any supplements. Submit this invoice within 90 days following IDOT approval of the PS&E.

Upon receipt of the final invoice, the District will prepare the Form BFM 336 to notify the appropriate office of the project completion.

3. FA Funded Engineering Services. The requirements for state funded engineering services apply. IDOT will audit invoices in accordance with FHWA approved auditing procedures (See Section 5-5.12(d)). Upon completion of the audit and resolution of any findings, IDOT will close out the Contract Obligation Document and submit a final voucher to FHWA.

The prime consultant shall complete Form BLR 05535 and submit to the district at the conclusion of the contract. The district will submit this form to the Central BLRS along with the final invoice.

5-5.12(d) Audits

Agreement administration will be audited by the IDOT under the "Single Audit Agreement." The IDOT's "Memorandum of Understanding, Current Billing, and Concurrent Audit Program" will be used in the fiscal control of projects between the State and FHWA. Guidelines for the performance of audit evaluation will be adhered to as set forth in "Procedure for Audit Assurance of Cost Estimates in Excess of \$50,000."

5-5.13 Evaluation

The LPA's project administrator is responsible for evaluating the professional design firm's or sole proprietorship's performance. Figure 5-5B contains typical criteria for evaluating firms. Upon completion of the evaluation place a copy in the LPA's file for consideration when a professional design firm or sole proprietorship is to be hired for future work.

5-6 RAILROAD AGREEMENTS

As changes take place on the railroads and local highway systems, there will be a need for crossing improvements, structure replacements, or the elimination of a crossing. Before these actions can take place, an agreement must be in place that describes the scope of work, the responsibilities of the parties involved, and the method(s) of payment.

For both upgrades to existing crossings and the construction of new crossings, contact the railroad early in the process of planning and design. Long approval times are typical for any work within railroad right-of-way.

5-6.01 Requirements for a Railroad Agreement

A railroad agreement is required where:

- there are proposed joint improvements between railroad(s) and road districts, municipalities, or counties involving changes in a railroad grade separation structure or grade crossing, including changes in protection that will be paid totally or in part with MFT, State, or federal funds,
- there are improvements on the local highway system that require a relocation or removal of the railroad facilities, and/or
- if there is a change in circuitry and/or traffic signal preemption.

A separate railroad agreement is not normally required when the Illinois Commerce Commission (ICC) issues an order or develops a stipulated agreement. See Section 5-7.06 of this Manual covering the improvements listed above. A supplemental agreement will be required if the ICC order does not cover all of the federal requirements or fund types.

5-6.02 Agreement Format

In the agreement, specify the responsibilities of each party. The agreement should contain the following items plus any additional items applicable to the project:

1. Identify the railroad name, local agency name, and MFT section number, if applicable. For Federal-aid projects, also identify the project and job number.
2. Include a description of the work to be done.
3. Provide a location description and location map. Include the AAR DOT number and the railroad milepost.
4. For projects with federal funds, include a statement that the project is subject to FHWA requirements.
5. Identify who is responsible for the surveys, plan preparation, specifications, and estimates.
6. Include the responsibilities for special signal and pavement markings at railroad crossings.
7. Identify which agency is responsible for letting and awarding the contract and who will provide construction supervision of the work.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-6(2)

Jan 2005

8. Identify the selected method of construction (e.g., State or local let contract, railroad or local forces).
9. Note if concurrence in the award of the contract is required.
10. Provide a division of cost showing funding responsibilities and the type of funds being used.
11. Identify the method of payment and/or reimbursement by each party.
12. Note the local agency appropriation for their share of the cost.
13. For federally funded projects, include any statements regarding DBEs. Note the DBE program being followed by the local agency if it is a locally let contract.
14. Identify who is responsible for railroad adjustments and the salvage of old equipment.
15. Identify who is responsible for maintenance of the completed work (e.g., crossing surfaces, warning signals, power lines, roadway approaches).
16. If protection work is involved, the agreement must stipulate that the work conforms to the ICC Requirements for Railroad-Highway Grade Crossing Protection and to the Illinois Manual on Uniform Traffic Control Devices.
17. Note who is responsible for the retention of records for inspections, audits, etc. Railroads must retain records for 3 years after completion of the project.
18. Identify the proposed completion date of the project.
19. Provide provisions in the agreement to allow termination of the project.
20. Include a statement that IDOT audits railroad bills for work performed by railroad forces in accordance with FHWA requirements on all projects involving the use of State or federal funds.

5-6.03 Preparation and Execution

Typically, the local agency or the local agency's consultant will prepare the railroad and local agency agreement. At the request of a local agency, the Central BLRS can provide assistance to the local agency during the agreement preparation process. The draft agreement is circulated among the affected parties and is sent to the district, the local agency, the railroad, and the Central BLRS for corrections/comments. Once corrected, the agreement is executed by all parties.

Upon review of the draft agreement by IDOT, the local agency arranges with the railroad to have an estimate of cost and plans submitted to the district for approval prior to execution of the agreement.

A minimum of three original agreements should be provided by the appropriate parties. Additional original agreements should be included, if more than one local agency and/or railroad is a party to the agreement.

The agreement should be signed by the authorized local agency and company representative. Usually, the local agency representative is the chairman of the county board, highway commissioner, mayor, or village president. In the case of a county or municipality, if another local official signs the agreement, the official must be authorized to do so by resolution of the county board, city council, or village board. The railroad representative who signs the agreement is usually the company president, general manager, or chief engineer. IDOT approval of the executed agreement must be secured prior to authorizing the railroad company to proceed with the work.

Railroad agreements involving MFT funds require the approval of the district.

For guidance on coordinating with railroads, see Section 10-2.01 of this Manual.

5-6.04 Procedure for Joint State-Local Agency Railroad Agreements

For joint State and local agency improvements involving railroad crossing work where the construction contract will be awarded by the State, negotiations with the railroad may be handled by IDOT or the local agency as provided in the joint agreement. If the joint agreement makes no provisions for railroad negotiations, the development of agreements and negotiations with railroad companies will be handled by the local agency. For railroad work to be performed in conjunction with a Federal-aid highway improvement, FHWA requirements and/or the provisions of Chapter 7 of the BDE Manual will apply. When the plans are prepared by the local agency, a plan and profile of the highway adjacent to the railroad crossing is submitted to IDOT by the local agency before negotiations are started. When the local agency will award the contract for joint improvements, all negotiations with the railroad are handled by the local agency and the required documents are secured by the local agency.

5-6.05 Compensation

Compensation for railroad work is usually based on an actual cost basis. A lump-sum agreement can be used for routine rail crossing safety improvements (e.g., warning devices, crossing surfaces). Under a lump-sum agreement, actual cost records and an audit will only be made to evaluate actual project costs in order to accurately negotiate future lump-sum contracts.

5-6.06 Illinois Commerce Commission

5-6.06(a) Illinois Commerce Commission Jurisdiction

Rail carriers (railroads) are corporations engaged in the transportation of passengers and/or goods for hire in the State of Illinois, as defined in the Illinois Compiled Statutes (625 ILCS 5/18c), and come under the jurisdiction of the Illinois Commerce Commission (ICC). The State law states, in part:

No public road, highway, or street shall hereafter be constructed across the track of any rail carrier at grade, nor shall the track of any rail carrier be constructed across a public road, highway, or street at grade, without having first secured the permission of the Commission;

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-6(4)

Jan 2005

The Commission's rules, regulations, and requirements cover the construction, maintenance, division of cost, marking, and signaling of highway and railroad crossings in the State of Illinois.

5-6.06(b) General Procedures

When ICC is involved in a highway-railroad improvement, ICC will either approve a stipulated agreement with the railroad and local agency, then issue an ICC order, or issue an order after a petition has been filed, and a public hearing has been held.

Section 5-7.06(c) of this Manual defines when a petition is required and when a stipulated agreement may be used. Petition and stipulated agreement procedures are discussed in Sections 5-7.06(d) and 5-7.06(e) respectively.

5-6.06(c) Petition and Stipulated Agreements Guidance

1. Petition. In certain instances, a petition followed by a hearing with ICC is required. The following are cases in which a petition is required:
 - the establishment of a new public at-grade railroad crossing,
 - the elimination of any existing public at-grade crossing or grade-separated structure,
 - new construction of any grade-separated structure with a cost greater than \$1,000,000,
 - the installation of automatic warning devices at a crossing with less than two trains per day, and
 - where a crossing does not meet the minimum stipulated agreement criteria for signal improvements or one of the parties involved is unwilling to execute a stipulated agreement.
2. Stipulated Agreements. Stipulated agreements are generally used under the following conditions:
 - a. Automatic Flashing Light Signals (AFLS) with Gates. AFLS with gates may be recommended by the stipulated agreement procedure when any of the following conditions are met or exceeded unless a diagnostic team finds automatic flashing lights signals and gates are not warranted and recommends the installation of an alternative active/passive warning device:
 - the product of the seasonally adjusted average daily traffic count and the average daily train movements exceeds 3,000 for the mainline or branch line tracks having two or more train movements daily,
 - the clearing sight or stopping sight distances for normal highway conditions, for actual rail and vehicular traffic speeds are restricted and the product of trains per day times vehicles per day exceeds 1,000,
 - there is an unusual highway or track geometric or vehicle/train operation that creates a hazardous condition that cannot be reasonably improved by other means, or
 - a diagnostic team recommends the improvement.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

Jan 2006

5-6(5)

- b. Other. The stipulated agreement procedure may also be used for the following conditions:
- reconstruction or minor relocation of existing grade separation structures,
 - construction of new grade separations costing less than \$1,000,000,
 - upgrading control circuitry,
 - installation of cantilevered signals due to the widening of the roadway,
 - the construction of connector roads where crossing closures are involved,
 - improvement, reconstruction, relocation, or realignment of the highway approaches at any existing public grade crossing, and/or
 - improvement, reconstruction, relocation, or removal of track structures and railroad appurtenances that may be in the interest of public safety at an existing public grade crossing.

In any condition where the party desiring the crossing improvements is unsure which procedure to use, contact ICC for a determination.

5-6.06(d) Petition Procedures

If the local agency can reach agreement with the railroad concerning the type of warning device needed and the division of cost for an existing crossing, it may not be necessary to hold a formal hearing before ICC. If the local agency cannot reach an agreement with the railroad, a formal hearing must be held before ICC. Either the local agency or the railroad may submit a petition requesting a hearing to ICC. Application forms are available from ICC. The petition should state the location of the crossing(s) involved, the improvements desired (including the reasons why the improvements are necessary), and that amount of financial assistance requested, if applicable. When filing a petition with ICC, also provide a copy of the petition to the railroad or local agency and IDOT.

Upon receipt and review of the petition, ICC will send out a notice of the date, time, and place of the hearing to all parties involved. The hearings are conducted in a manner similar to that of a court trial, but on a more informal basis. During the hearing, each party will have the opportunity to express their concerns regarding the proposed safety improvement.

The petitioner should present all pertinent information relative to the physical characteristics of the highway and approaches near the crossing and surrounding area. Data should be presented depicting existing and projected vehicular traffic on the crossing. The petitioner should present evidence showing why the improvements are needed. Information regarding the roadway work should be presented if there will be a highway project in connection with the crossing improvement.

Typically, the railroad company involved will have a representative present who can testify with regard to train traffic and the estimated cost of warning devices and/or crossing surface work. However, it is advised that the local agency have some knowledge of this information prior to the hearing. While it is not required, the parties may choose to have an attorney present to provide assistance at the hearing.

ICC issues an order based on findings made from evidence presented at the hearing. The order includes a description of the work to be performed, the parties responsible for ensuring that the work is performed, the division of cost between affected parties, and the date by which all work should be completed.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-6(6)

Jan 2005

In contested cases, ICC issues a proposed order where all affected parties are given an opportunity to comment within a specified time frame, usually 2 weeks, before the final order is issued.

5-6.06(e) Stipulated Agreement Procedures

Generally, the local agency initiates the stipulated agreement procedure by contacting ICC in writing or by phone and requesting that a meeting be scheduled. However, a railroad or IDOT may also request a meeting. Because the nature of the proposed crossing improvements may vary considerably, ICC contacts each affected party regarding the necessary preparation prior to the meeting.

On the date and time mutually agreed upon, all affected parties meet at the site and discuss the crossing needs and possible solutions. Should it be determined at the meeting that the project meets the minimum warrants under the ICC's stipulated agreement procedures and all parties are in agreement with the improvements and division of cost, ICC will prepare a stipulated agreement for signature by all parties; see Section 5-7.06(c). Prior to the circulation of a stipulated agreement, all necessary cost estimates (e.g., signals, surfaces, approaches, bridge construction) must be submitted to ICC. After all parties execute the stipulated agreement, ICC will issue an order for completion of work.

If the proposed project does not satisfy the requirements for a stipulated agreement or there is disagreement among the parties regarding the proposed work or division of cost, any affected party (e.g., local agency, railroad, IDOT) may petition ICC for a hearing; see Section 10-2.01(f).

5-7 UTILITY AGREEMENTS

5-7.01 Requirements for Utility Agreements

A utility agreement is required when a proposed highway improvement requires relocation or adjustment of an existing utility and existing permits do not provide for moving the utility. Typically, these are projects that affect utilities located outside the existing highway right-of-way.

5-7.02 Agreement Format

When a project requires a utility agreement, the local agency is normally responsible for its preparation and execution in consultation with the district. Each utility agreement must specify the responsibilities of each party and contain the following items plus any additional items applicable to the project:

1. Identify the utility name, local agency name, and MFT section number, if applicable. For Federal-aid projects, also identify the project and job number.
2. Include a description of the work to be done.
3. Provide a location description and location map.
4. For projects with federal funds, include a statement that the project is subject to FHWA requirements.
5. Identify who is responsible for the surveys, plan preparation, specifications, and estimates.
6. Identify which agency is responsible for letting and awarding the contract and who will provide construction supervision of the work.
7. Identify the selected method of construction (e.g., State- or local-let contract, utility forces, or contract by utility company).
8. Note if concurrence in the award of the contract is required.
9. Provide a division of cost showing funding responsibilities and the type of funds being used.
10. Identify the method of payment and/or reimbursement by each party.
11. Note the local agency appropriation for their share of the cost.
12. For federally funded projects, include any statements regarding DBEs. Note the DBE program being followed by the local agency, if it is a locally let contract.
13. Note who is responsible for the retention of records for inspections, audits, etc. The utility company must retain records for 3 years following completion of work.
14. Identify the proposed completion date of the project.
15. Provide provisions in the agreement to allow termination of the project.
16. Include a statement that IDOT will audit utility bills for work performed by utility forces in accordance with FHWA requirements on all projects involving the use of State or federal funds.

5-7.03 Preparation and Execution

The draft agreement is circulated among the affected parties, including the district, for corrections/comments. Once corrected, the agreement is executed by the local agency and the utility company.

Upon review of the draft agreement by the district, the local agency arranges with the utility company to have an estimate of cost and plans submitted to the district for approval prior to execution of the agreement.

The agreement is signed by the authorized local agency and utility company representative. Usually, the local agency representative is the chairman of the county board, highway commissioner, mayor, or village president. In the case of a county or municipality, if another local official signs the agreement, the official must be authorized to do so by resolution of the county board, city council, or village board. The utility representative who signs the agreement is usually the company president, general manager, or chief engineer. The agreement must be approved by the district.

Federal participation in the relocation or removal cost of a utility, required by a highway project, may be secured by following the federal procedures for project authorization/obligation of funds and obtaining the district's approval of the agreement and PS&E prior to the beginning of utility work. If the utilities are located on the public right-of-way, the associated cost for relocation or removal must be borne by the utility company.

For additional guidance on coordinating with utility companies, see Section 10-4 of this Manual.

5-8 MAINTENANCE AGREEMENTS FOR STATE HIGHWAYS

5-8.01 Traffic Signal Master Agreements

For most traffic signals on State highways, the districts will select local contractors to provide maintenance. However, in some cases, municipalities may perform the signal maintenance work that is the State's responsibility under the terms of a master agreement. Local agencies are reimbursed by the State for maintenance and/or energy costs associated with the signals.

The Traffic Signal Master Agreement is prepared by the district Bureau of Operations. The agreement should:

- Identify the location of each traffic signal.
- Indicate the level of maintenance that should be provided.
- Identify the party that will be responsible for the maintenance costs and energy costs. If the cost is shared between the parties, indicate the portion of the cost for which each agency is responsible.
- Indicate whether the local agency will maintain the traffic signal through the use of its own forces or through an ongoing contractual agreement with a local contractor.

The agreement is signed by the local agency and IDOT.

For additional guidance on master agreements, see the IDOT Bureau of Operations Policy and Procedures Manual. The Bureau of Operations Policies and Procedures Manual also includes a sample master agreement and common amendments to the agreement.

5-8.02 Maintenance Agreements

IDOT is authorized to enter into contracts with any municipal corporation to maintain any State highway located within the municipal corporation (605 ILCS 5/4-406). The agreement will provide for a minimum level of maintenance, a discussion of the route included, and the amount of reimbursement for the local agency.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-8(2)

Jan 2006

5-9 TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVES AGREEMENTS

Illinois environmental law requires the Illinois Pollution Control Board to consider land use controls in determining risk to human health from contamination in soil and groundwater. This approach is known as the Tiered Approach to Corrective Action Objectives (TACO). As a result of IDOT's effort, IDOT has developed Highway Authority Agreements, which are the land use controls recognized in TACO; see Section 20-12.09 of this Manual for TACO agreements. In the agreement, IDOT or a local highway authority is responsible, depending on who signs the agreement, for the following commitments:

- The agency will not allow drinking water wells to tap groundwater in the area of the right-of-way that may be contaminated.
- If soil in the right-of-way that may be contaminated is excavated, human health and the environment will be protected.

For a highway authority willing to make these commitments, there are a number of significant benefits. These include:

1. Notification. A company is required to notify the agency that it has contaminated the right-of-way and will take responsibility. These agreements could cover nearly any type of pollutant.
2. Release. The company gives the agency a legal release from liability and indemnifies the agency for claims that may be made.
3. Reimbursement. Should the local agency excavate through contaminated soil in the right-of-way (e.g., release of petroleum), the company will reimburse the local agency's costs of dealing with the contamination (e.g., cost of disposing of the contaminated soil in a landfill).

A company that has contaminated the right-of-way has two choices:

- it can clean up the right-of-way, or
- it can negotiate a Highway Authority Agreement that is acceptable to the local agency.

The first choice is expensive and an unnecessary drain on the Leaking Underground Storage Tank Fund. This fund reimburses owners for their cleanup costs of those tanks. Money for this fund comes from tax on motor fuel sold at the pump, similar to the Motor Fuel Tax. It is typically unnecessary because the cleanup is not needed to protect human health and the environment. However, the local agency still must meet its commitments made in the Highway Authority Agreement.

5-10 INVOICE PROCESSING

5-10.01 General

According to the terms of the joint agreement, local agencies may invoice IDOT for reimbursement of State and federal funds.

5-10.02 Supporting Documentation

To process an invoice, BLRS requires copies of documentation verifying local agency payments. Two copies of the invoice and supporting documentation shall be submitted to the District LRS office. Supporting documentation must include, but not limited to, the following:

- Copies of all cancelled checks paid for the project,
- Letter from recipient that payment was made if cancelled check(s) is/are not available,
- List and itemization of all direct costs and unit rates for each direct cost item,
- List of employees by classification, time spent by each employee on the project for the Invoice service period (Note: ensure the time charges are for the service dates shown on the Invoice and that they are within the period for the obligated funds.), and the hourly rate of each employee. Verify that the computations for total employee labor costs are correct.
- Low bid amount and award date, if applicable.

Proper preparation of the invoice in accordance with the above guidelines is essential to avoid delays in processing.

Local agencies shall retain all Invoice documentation for a minimum of 3 years after the project is completed to allow for State and/or local agency audits.

5-10.03 Payment Status

Once invoice payments have been processed by the BLRS, payment status may be checked on the official Illinois State Comptroller's website. Click on "Vendor Payments" and follow the instructions. A Tax Identification Number is required to access the system.

5-10.04 Local Agency Single Audit Requirement

If a local agency receives a significant amount of federal funding (currently \$500,000 a year or more), a single audit must be submitted to IDOT. This requirement is set forth by the U.S. Office of Management and Budget, Circular No. A-133 (2003). If an audit is required, the local agency shall identify federal funds received through IDOT. The Catalog of Federal Domestic Assistance (CFDA) number for the Federal-Aid Highway Program is 20.205 -Highway Planning and Construction.

BUREAU OF LOCAL ROADS & STREETS
AGREEMENTS

5-10(2)

Nov 2008

5-10.05 Obligation Time Limit

Final invoices shall be submitted to BLRS within one year of the completion of the project. If a final invoice is not received within one year of completion of the project, the last invoice received will be considered the final and the contract obligation will be closed. If this deadline is not met, an extension of time may be requested. An extension of time request shall include justification for the delay and an estimated final Invoice date.