

# UTILITY POLICY NO. 2013-1

## PAY ITEMS AND OPT OUT CLAUSES IN UTILITY RECEIVABLE AGREEMENTS

Initial Policy Development Date: November 4, 2013

Last Revision Date: August 28, 2017

### **Purpose:**

This policy has two purposes. The first is to provide guidance on the applicable pay items that utility companies must include in MaineDOT Utility Receivable Agreements when utility construction work is carried in our project contract. The project circumstances will determine what pay items are appropriate for a given contract and may include, but not be limited to mobilization, traffic control, dust control, tree removal or trimming, rock excavation, paving, etc.

Second, this policy discusses project situations when opt out clauses are, or are not acceptable. It also presents the criteria to be used when opt out clauses are included in Utility Receivable Agreements.

### **Pay Item Criteria:**

Contract pay items will be included in Utility Receivable Agreements for the construction of all new utility facilities. The project Utility Coordinator shall determine what pay items are appropriate for the given project circumstances. Examples of new facilities are new or replacement water and sewer construction in highway projects, or conduits for electric, telephone, cable or gas on a bridge.

For projects where only adjustments of gate valves, manholes, etc., are required, additional pay items, as noted above, will be included in agreements only when the construction cost for the utility adjustments is \$100,000 or more.

At a minimum, all agreements for utility facility construction or relocation of \$100,000 or more, and utility adjustment projects of \$100,000 or more, will include a pay item for mobilization. For the initial agreement terms, the value of the mobilization pay item will be estimated at 10% of the estimated construction cost of the utility work. The actual amount billed to each utility company will be calculated as follows using the successful bidders pay item dollar values:

$$\frac{\text{Total Contract Cost of Utility Work}^*}{\text{Total Cost of Project Work}^{**}} \quad \times \quad \text{Contract Mobilization Dollar Amount}$$

\* Calculated for each individual utility

\*\* This is the Total Contract Dollar Amount Minus the Mobilization Dollar Amount

An example project scenario and calculation follows below:

**Example:** Original Utility Work Estimated Cost is \$120,000 (One utility in the project)

\$1.8M Contract Award, Mobilization Item Dollar Amount is \$190,000, Total Cost of Project Work is \$1.8M - \$190,000 = \$1.61M, Total Contract Cost of Utility Work is \$119,000.

For the initial agreement terms, the Mobilization Pay Item is 10% of \$120,000 = \$12,000.

So the initial agreement will be for \$120,000 + \$12,000 = \$132,000

Note, the agreement should also include other pay items as appropriate

The actual Mobilization amount billed is  $\$119,000 \div \$1,610,000 \times \$190,000 = \$14,043.47$ . So, the total to be billed to the utility will be  $\$119,000 + \$14,043.47 = \$133,043.47$

All the utility work will be billed in accordance with the terms of the Utility Receivable Agreement and the Contract unit prices. The mobilization item dollar amount will be invoiced to the utility in the final billing.

#### **Opt Out Clauses:**

Opt out clauses are sometimes used in Utility Receivable Agreements to allow utilities the ability to exit the MaineDOT contract award when bid prices for utility construction are too high. The following are conditions under which opt out clauses are not acceptable:

- Utility work in excess of \$100,000, or
- Utility work dollar value is greater than 50% of total contract amount, or
- The Utility Coordinator determines the project corridor is too congested or there are too many utilities to allow multiple contractors working simultaneously

Opt out clauses in the agreement shall allow the utility company to opt out if the total bid cost for the combined utility work items is more than 15% over the utility work estimate in the Utility Receivable Agreement. If the total bid cost for the combined the utility work items is no more than 15% over the utility work estimate in the Utility Receivable Agreement, the utility work will remain in the MaineDOT construction contract.

When an opt out clause is used, the basis of award will be the main contract work pay items, not the utility work pay items. When no opt out clause is used, the utility work pay items will be included in the basis of award.