

Acquisition Guidelines For Local Public Agencies

by David Layne, SR/WA

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Some time ago, an article appeared in *Right of Way* on the use of private right-of-way contractors by local public agencies (LPAs).¹ Twenty-five LPAs and a like number of private contractors were surveyed to determine the best and most economical methods to acquire rights of way. The survey asked some pretty interesting questions, but the response to the question about LPA staff size was particularly interesting. Almost 65 percent of the LPAs that responded stated they had at least 10 employees responsible for land acquisition. Even more interesting was that fully 28 percent of the agencies that answered Mr. Casper's questionnaire had over 100 employees acquiring land.

Many who work for state highway departments and monitor LPAs for federally aided highway projects might be surprised as to the rather large staff sizes of most of the LPAs. Prior to obtaining the questionnaire results, it was assumed most LPAs had less than 10 acquisition staff people and probably, at best, only one or two agents.

For those who monitor LPA highway acquisition activities and attempt to explain the federal requirements for land acquisitions to highway engineers and other local officials, the look of disbelief and confusion are common responses. "Lead-time requirements?" "In-lieu payments?" "Uniform Act?" These are questions that frequently occur.

However, here is the big question that occurs to engineers: "How am I going to do all the right-of-way work when I don't have adequate staff to maintain the road system under my jurisdiction now?" With a staff of 100 land acquisition people? In most in-

stances, the LPA engineer or department head would settle for one right-of-way agent to do the work.

"It is the responsibility of the state highway department to fully inform political subdivisions of their responsibility in connection with federally assisted highway projects. The state highway department shall monitor real property acquisitions activities conducted by political subdivisions to ascertain that right of way is acquired in accordance with provisions of state and federal laws and as required by Federal Highway Administration (FHWA) directives."² The work must get done and it must get done correctly. If the project is certified for construction, the right of way must be acquired and acquired in conformance with the Uniform Act. On the other hand, the LPA official is not sure what has to be done nor how to do it. Hence the right-of-way agent's challenge: to help the LPA "do the job."

Right-of-way practitioners must work with the LPA to ensure compliance with the Uniform Act requirements and appropriate state laws. They are the experts in acquisition

only a summary). The Final Rule and Notice for the 1987 Amendments to the Uniform Act contains about 45,000 words. Therefore, in assisting the LPAs, it is extremely important to have complete knowledge of FHWA's requirements. This checklist is included for the purpose of ensuring that the major requirements aren't missed.

CHECKLIST OF BASIS ACQUISITION PROCEDURES³

Appraisal and Appraisal Review

Before the start of negotiations, the property to be acquired will be appraised with the following exceptions: if the owner donates the property and releases the agency from the appraisal obligation, or the agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less.

The owner, or the owner's representative, will have the opportunity to accompany the appraiser during the inspection of the property.

Before the start of negotiations, the agency will establish an amount

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procedures and must use that expertise "...to ascertain that right of way is acquired in accordance with provisions of State and Federal laws and as required by FHWA directives." It's simple in theory, but far from simple in practice. The monitoring process can be made easier though if a simple step-by-step approach to compliance is adopted. To that end, the following is a checklist of the Uniform Act's requirements. However, a couple of words of caution are in order (this is

which it believes is just compensation for the property.

Negotiations

The agency will make every reasonable effort to expeditiously acquire the property by negotiations.

As soon as feasible, the owner will be notified of the agency's interest in acquiring the property and the basic protections provided to the owner.

The offer amount will not be less

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than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

The agency will make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

Along with the initial written offer, the owner will be given a written statement of the basis for the offer. The statement will include the amount offered and, in the case of a partial acquisition, a separate statement of the compensation for the property to be acquired and the compensation for damages, if any, to the remaining property. The written offer will state the location of the property and contain a description of buildings, structures and other improvements including equipment and trade

fixtures on the property to be acquired. The offer will also state any interest to be acquired in the property. When appropriate, include an identification of any separately held ownership interest in the property and the indication that that interest is not covered by the offer.

The agency will make reasonable efforts to contact the owner or the owner's representative and discuss its offer, the basis for the offer and explain its acquisition and payment procedures.

The owner will be given a reasonable time to consider the offer and to present material as to value and make suggestions as to the proposed terms and conditions of the purchase. The agency will consider the owner's presentations or other changes in the property or time delays, and if indicated the agency will update or

obtain new appraisal(s).

The agency will not take any coercive action in order to induce an agreement on the price to be paid for the property.

An agency official may approve an administrative settlement in excess of the amount offered if the administrative settlement is reasonable, prudent and in the public interest.

Before requiring the owner to surrender possession of the property, the agency will pay the agreed purchase price or deposit with the court an amount not less than the agency's approved appraisal.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the agency shall offer to acquire the uneconomic remnant.

Closing

The owner of the property shall be reimbursed for all reasonable expenses incurred for recording fees, transfer taxes, document stamps and similar expenses incidental to the transfer of real property to the agency. In addition, the owner will be reimbursed for mortgage prepayment and penalty costs as well as pro rata portion of prepaid real property taxes.

Condemnation

If the agency intends to acquire any interest in real property by eminent domain, it will start formal condemnation proceedings and not intentionally make the owner institute legal proceedings to prove the fact of the taking of the property.

Donations

An owner whose property is to be acquired may donate all or any part of the property, interest or compensation provided the agency has fully informed the owner of the right to receive just compensation and the agency has obtained an appraisal for the property. No appraisal is needed if the owner releases the agency from the appraisal obligation or the agency

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