

SPONSORS' GUIDE TO LAND ACQUISITION IN FEDERAL PROJECTS

INTRODUCTION

Before any project may be built, there must be land on which to build. It is the responsibility of the Real Estate Division to insure that the necessary real estate is available for all projects that are planned for construction. In Local Cooperation Projects, land acquisition is usually the responsibility of the Non-Federal Sponsor. Although the Project Manager has the responsibility for overall coordination of the project, close cooperation is required between the Non-Federal Sponsor and the Real Estate Division because of the interrelationship between the project design and real estate requirements. This cooperation will assure that the Non-Federal Sponsor completes all real estate acquisitions in order to meet the milestones established by the Project Manager.

The steps discussed below are designed to coordinate with the credit review process and to insure that the Non-Federal Sponsor receives the maximum allowable credit for the real estate that it acquires.

The cost-sharing provisions contained in the Project Cooperation Agreement (PCA) between the Corps of Engineers and the Non-Federal Sponsor are required by the Water Resources Development Act of 1986 (Public Law 99-662) as amended. For structural flood control projects, the Non-Federal Sponsor shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, relocations (excluding railroad bridges and approaches) as may be determined by the Government to be necessary for the construction, operation, and maintenance of the project.

The Non-Federal Sponsor must in most cases, contribute between 35 and 50 percent of the total project costs, of which at least 5 percent must be in cash. The Non-Federal Sponsor receives credit for the fair market value of the real estate interests as of the time it is made available to the project. The amount of credit is determined by an appraisal obtained by the Non-Federal Sponsor. In addition, for real estate interests acquired by the Non-Federal Sponsor within a 5-year period prior to the effective date of the PCA, or any time thereafter, the credit will also include the costs of acquisition, such as closing and title costs, appraisal costs, survey costs, attorney's fees, mapping costs, plus necessary and reasonable indirect costs. In addition, the costs of providing relocation assistance to persons and businesses displaced by the project are creditable to the extent provided by law.

LAND ACQUISITION

Usually, land acquisition for the project begins after both parties sign the PCA. Occasionally, however, a Non-Federal Sponsor will wish to begin the process before the

PCA is finalized. You should be aware that all actions taken before the formal execution of the PCA are at your own risk.

The steps for the acquisition of real estate for the project are arranged by subject matter and are generally in chronological order. However, there is substantial overlap when elements of more than one step are performed at the same time. For example, you should begin the process of contracting for the survey of project boundaries, as well as the ordering of title evidence and appraisal services as soon as possible.

Transmittal of Final Right-of-Way Drawings

The real estate acquisition process for PCA projects begins with the transmittal of right-of-way drawings from the District to the Non-Federal Sponsor, along with the formal direction to acquire the real estate interests necessary to construct the project. The Non-Federal Sponsor is instructed to acquire the minimum real estate interest necessary for the project. The minimum interest will usually be a type of easement. However, fee title is required for some project purposes such as recreation features, mitigation and uneconomic remnants.

The right-of-way drawings will identify the real estate interests to be acquired (e.g. flowage, channel, road, borrow, disposal easements, etc.) and their locations. Accompanying the drawings will be standardized language for each real estate interest that we call the "recommended estate" as shown in "Standard Estates". These estates should be used by the contract appraiser and appear in all offers and deeds.

The Non-Federal Sponsor may acquire the full fee interest in any or all of the tracts. However, only the value of the minimum interest required for the project, as determined by the government, shall be included in total project costs and credited to the sponsor's share. Therefore, if the Non-Federal Sponsor contemplates the acquisition of a fee interest where only an easement is required, the appraisal should set forth "before" and "after" values of the affected tracts as well as their fee values, unless prior approval is obtained for a greater estate.

Survey of Project Boundaries

The first duty of the Non-Federal Sponsor is to obtain a property line survey of the project boundary that ties into project survey coordinates. However, it will be necessary for the Non-Federal Sponsor to describe the project boundaries by metes and bounds in the form of a legal description. In addition to surveying the project limits, a survey may be required along the lines of taking for each of the estates in a given tract or tracts. In some cases it may be necessary to survey individual ownership. If any survey indicates a need for adjustments to coordinates, the Corps must concur with any changes. From the surveys, the Non-Federal Sponsor should develop survey drawings to be forwarded to the Real Estate Division for comparison with the project drawings.

Ownership Mapping and Legal Descriptions

A "tract" is what we call each individual parcel in the project under separate ownership and is the basic unit of review used by the Real Estate Division to determine real estate credits for the Non-Federal Sponsor. From a survey, the Non-Federal Sponsor prepares a legal description for each tract in the project and develops a project ownership Tract Register for each segment or reach of the project. A sample of the preferred format for the project ownership drawing shows the numbering system that should be used for the tract and is located in the Sponsor Toolbox on the Chicago District Real Estate Web page. Before ordering appraisals, the legal descriptions and ownership drawings should be sent to the Real Estate Division for review. This is to ensure that all the land within the project boundaries is included in the Non-Federal Sponsor's acquisition plan, and that no real estate outside the project is included.

Appraisal

The PCA and the authorized statutes provide that the fair market value of each tract in the project shall be determined by an appraisal of the property as provided by the Non-Federal Sponsor. Several contiguous tracts under one ownership may be combined in one appraisal. The appraisals must be prepared by qualified, independent appraisers selected by the Non-Federal Sponsor that are acceptable to the Government. Each appraisal is reviewed by a Corps of Engineers Review Appraiser. Prior to selecting an appraiser, the Non-Federal Sponsor should submit qualifications of prospective appraisers to the Real Estate Division for approval. A written contract should then be entered into between the Non-Federal Sponsor and the contract appraiser as shown in the model Real Estate Appraisal Services Contract which may be modified as required for your use and is found in the Sponsor Toolbox. We strongly recommend the use of a contract similar to this because it provides the controls necessary for timely and proper completion of the appraisals. Each appraisal should conform to the standards set forth in the guide entitled "Uniform Appraisal Standards for Federal Land Acquisitions", Interagency Land Acquisition Conference, 1992, known as "yellow book". Copies of this book are available from the Real Estate Division as needed and can be pulled down from the Website page link. We recommend that each contract appraiser should be provided with a copy prior to any request for proposals. All appraisals should be forwarded to the Real Estate Division as soon as the appraiser completes them. To assure that full credit is received, each appraisal should be reviewed by the Corps Review Appraiser prior to initiation of negotiations for acquisition with the property owner. Examples of appraisals and their exhibits are also available from the Real Estate Division,

Negotiations

The next step is for the Non-Federal Sponsor's representative to contact the property owners and negotiate to purchase the tracts required for the project. Your negotiator should keep a brief narrative record of each contact with each property owner. This negotiator's report should be kept by tract and be included in the tract file. A sample

of the negotiator's report used by the U.S. Army Corps of Engineers is available on the Website.

Offer to Purchase

Title III of the Federal statute entitled Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended, imposes certain requirements on the acquisition of property for federally funded projects. Among other things, the initial offer to purchase must be in writing for no less than the full approved appraised value. The Non-Federal Sponsor must pay all reasonable closing costs as well. A brochure entitled "Owner's Guide to Acquisition" is available as an informational guide to landowners of the procedures required for federally funded acquisitions.

A written purchase agreement should be used that provides for a date of possession as well as a date that the property will be vacated if it is an occupied residential or commercial property. To insure that you receive full credit, any offer over the appraised value, along with a justification for the price increase, must be submitted to the Real Estate Division for approval as an administrative settlement before it can be presented to the landowner. If negotiations are successful, the purchase can be closed, the landowner paid, and the deed recorded. If no purchase price can be agreed upon, the Non-Federal Sponsor must acquire the tract by condemnation.

Relocation Assistance

Public Law 91-646, as amended, and the PCA require the Non-Federal Sponsor to provide relocation assistance to all people and businesses displaced by the project. Title II of the Act requires that certain benefits be paid and assistance be given to all persons and businesses that must be relocated from their homes or places of business because of a federally funded project. These benefits include moving and related expenses, replacement housing payments for both homeowners and tenants and relocation advisory services.

Before the project is started the Non-Federal Sponsor should verify that decent, safe and sanitary housing is available for all persons who will be displaced from their residences as a result of the project. Before you relocate any persons or businesses, you should contact the Real Estate Division for a detailed review of the procedures and requirements. A brochure entitled "Your Rights and Benefits as a Displaced Person" is available from the U.S. Dept of Transportation for guidance to relocations. Title 49, Part 24 of the Code of Federal Regulations provides Federal guidelines for implementation of the Relocation Assistance requirements of Public Law 91-646, the primary legal requirement in performing acquisition and relocations.

Making Real Estate Available for Construction

The Non-Federal Sponsor should transmit title evidence for each tract to the Real Estate Division. Generally, this evidence will consist of a Title Insurance Policy, or a Title Opinion by the Non-Federal Sponsor's attorney indicating the scope of the title examination made. A copy of the deed conveying the tract to the Non-Federal Sponsor and all other curative and closing documents should also be submitted. The Real Estate Division's attorney will review the title evidence for each tract. Construction contracts cannot be awarded until this process has been completed and the documents described below are delivered to the Real Estate Division.

After the Non-Federal Sponsor has acquired all the real estate interests necessary for the project or divisible segment, the chief operating officer for the Sponsor executes an "Authorization for Entry for Construction" to the Government, which grants the Corps the right to enter onto the property to construct the project. Included with the authorization is an "Attorney's Certification" to be signed by the chief legal officer for the Sponsor. Samples are available on the Website.

Claims for Credit

The final step is the submittal of claims for real estate credit toward the Non-Federal Sponsor's share of project costs. All claims associated with the acquisition of real estate should be submitted to the Real Estate Division. Claims for any approved engineering, planning, construction work and for the planning and construction of utility relocations should be submitted to the Project Manager. All claims must be in writing; be itemized; include as an attachment all appropriate supporting documentation; and include a certification that the Non-Federal Sponsor has expended the funds. All land value claims should be submitted within 180 days after the "Authorization for Entry for Construction" has been transmitted to the Government. All other claims should be submitted as soon as possible to ensure that the maximum amount of approved credit is applied when the Non-Federal Sponsor is required to make cash contributions under the formula set forth in the PCA.

As much as possible, real estate related expenditures should be attributed to individual tracts. However, with sufficient documentation, some claims may be submitted as a lump sum for the project. These claims can be submitted separately and should not include any amounts claimed for individual tracts. Appropriate documentation of all items claimed should accompany these forms when they are submitted to the Real Estate Division.

The Non-Federal Sponsor will receive credit for the actual associated direct and indirect costs of acquiring the interests in real estate necessary for the project if found to be reasonable, allowable and allocable. For this purpose, you should maintain time sheets for all your personnel involved in the acquisition process, which fully identify the specific purpose for each administrative charge. A running accumulation of credit amounts can be maintained through use of the Real Estate Tracking System, which is accessed, upon authorization, through the Website

Record Keeping

The Non-Federal Sponsor should develop an individual file for each tract or group of tracts under one ownership. All documents and correspondence should reference a tract number. The files should contain the records evidencing compliance with Public Law 91-646, as amended. Records should, in addition to those cited above, include at least the following: required notices, negotiator's reports, appraisals and reviews, determination of comparable replacement housing and records of contacts with displaced persons. Accurate financial records are required by the PCA and must be kept for verification of claims by audit.