

POLICIES AND PROCEDURES

OF THE

TERRITORY OF THE

UNITED STATES, VIRGIN ISLANDS

FOR THE

ACQUISITION OF RIGHTS-OF-WAY

FOR THE

FEDERAL-AID HIGHWAY SYSTEM

2025

INDEX

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I. PURPOSE:

- A. To establish general guidelines for use by the Territory of United States, Virgin Islands Government (USVI) in their acquisition of rights-of-way for the Federal-Aid highway systems.
- B. To comply with Federal Law, especially with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970^e, PL 91-646 (The Uniform Act) as amended, the MAP-21, the Moving Ahead for Progress in the 21st Century Act (P. L. 112-141) and Federal Regulations (23 CFR and 49 CFR). The American with Disabilities Act 1990, as amended (42 U.S.C. 12101) and the Civil Rights Act 1964, as amended.
- C. The USVI Department of Public Works aims to complete all right-of-way components of a project in an efficient, timely, and cost-effective manner to satisfy all parties, especially property owners.

II. AUTHORITY:

- A. Title 31, Virgin Islands Code, Chapter 26, as amended September 28, 1989, Bill No. 18-0040, (Act. No.5466); Chapter 23, Section 231a, Added June 9, 1977, No. 3988, Sess. L. 1977, p. 92; amended Nov. 17, 1977, No. 4072, Sess. L. 1977, p. 278; May 3, 1994, No. 5978, § 6, Sess. L. 1994, p. 68.
- B. Uniform Relocation Assistance and Real Property Acquisition Policy Act, of 1970, 42 U.S.C. 4601 46550(P.L. 91-646), as amended by Title VI of the Surface Transportation and Uniform Relocation Assistance Act of 1987, (P.L. 100-17), (PL 105-117).
- C. 23 U.S.C. 215 (Territorial Highway Program).
- D. MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141).
- E. Federal Rule, Federal Register/Vol. 81, No. 163/Tuesday August 23, 2016/Rules and Regulations

III. APPLICABILITY:

- A. The provisions included herein are applicable to all USVI Departments, Units, Bureaus or Offices, Real Estate Acquisitions Plans (RAMP) which receive Federal financial assistance in connection with the Federal-Aid highway program. Alternative Right of Way Manuals are not to be used by a RAMP.

B. Decision Matrix:

Project Type	Funding Source Breakdown
I. Projects with Federal-Aid Highway Program Funds 1. New Road Construction/Major Expansion (e.g., adding new lanes, creating new roadways where none existed) 2. Road Reconstruction/Rehabilitation/Capacity Improvement (e.g., significant structural repair, widening, intersection improvements) 3. Minor Roadway Improvements/Safety Projects (e.g., minor drainage work, guardrail installation, signage upgrades) Transit/Bicycle/Pedestrian Facilities (as part of the Federal-Aid Highway Program)	Federal-Aid + USVI Match
II. Projects with Predominantly USVI Local Funds, but some Federal-Aid Nexus 1. USVI-Funded Project with Incidental Federal-Aid Component (e.g., a local road project that crosses a federal-aid highway right-of-way, requiring a minor acquisition from the federal-aid ROW)	Federal-Aid + USVI Match
III. Projects with 100% USVI Local Funds (No Federal-Aid Nexus) 1. Emergency Repairs/Minor Maintenance (e.g., pothole repair, minor landscaping on existing ROW)	100% USVI Local/Territorial Funded Project

IV. **GENERAL RESPONSIBILITIES AND LINES OF AUTHORITY:**

A. Commissioner of Public Works Department (DPW):

1. Provides:
 - a. Insurance of the availability of funding.
 - b. Right-of-Way plans for use in appraisal development and the acquisition process.
 - c. Title reports for use in appraisal development and the acquisition process.

- d. Relocation determinations of replacement housing payments and rental supplements, etc.
- (1) A territorial right-of-way program manager designated by and under supervision of the commissioner (DPW) to manage the right-of-way program and to determine “Just Compensation” for right-of-way acquisitions. The right-of-way program includes appraisal, acquisition, relocation, property management, and other related functions necessary to acquire right-of-way needs in accordance with local and federal laws.
- (2) A territorial negotiator under supervision of the right-of-way program manager (if project activity warrants, there should be a resident negotiator for St. Thomas, St. John, and Water Islands projects; and a resident negotiator for St. Croix). The negotiator(s) have adequate experience in performing the functions of appraisal and negotiations.
- (3) A territorial relocation specialist to perform under supervision of the right-of-way officer. The relocation specialist should have adequate experience to perform the functions of appraisal, property management and relocation.

B. Law Department (Office of the Attorney General):

- 1. Provides:
 - a. Legal advice
 - b. Condemnation and trial services
- 2. Authority to (after consultation with DPW):
 - a. Settle condemnation cases
 - b. Take appeals

C. Mini Organization Chart



The VIDPW shall follow Attachment 11 R/W Services Contract Guide whenever it utilizes other public land acquisition organizations, RAMPS, or private consultants to perform acquisition and relocation activities. The VIDPW shall monitor such activities to ensure compliance with State and Federal laws and requirements.

Attachment 10 of this manual contains the description of the oversight and approval actions under the responsibility of the FHWA.

The VIDPW shall utilize the acquisition brochure developed by the FHWA to provide people affected by projects or acquisitions with description of the real property acquisition process and of the owner's rights, privileges and obligations.

V. PROCEDURES AND OPERATIONS

A. The Territory (USVI), on federally aided projects, will:

1. Not proceed with Right-of-Way acquisition until authorization from FHWA has been received. Such authorization will not be given until after relocation assurances have been submitted, if applicable, environmental clearances have been met and location approval has been received.
2. Conduct quarterly check-ins with FHWA to maintain compliance and proactively address issues.

B. RIGHT-OF-WAY PROGRAM MANAGER’S DUTIES

1. To manage the right-of-way program
2. To establish and maintain close liaison with the Department of Public Works’ Design and Engineering Sections, the FHWA Division Right-of-Way Officer and the FHWA Territorial Representative.
 - a. Become familiar with the requirements and policies of each of the groups they will be coordinating with, including 23 CFR 710 and 49 CFR 24 of Federal Regulations (CFR), the Federal-Aid Policy Guide (FAPG) (which replaced the Federal Highway Program Manual (FHPM) on December 9, 1991) and FHWA’s Project Development Guide (PDG) as well as other guidance which may be issued from time to time.
 - b. Report problems and seek solutions which will serve to advance the right-of-way acquisition program to a timely and successful completion.
 - c. Ensure and document that relocation personnel and the real property acquisition personnel of the Department of Public Works will be called upon or consulted with on all matters pertaining to location studies, acquisition plans, and environmental impact studies.

C. COORDINATION WITH OTHER AGENCIES

Standard Operating Procedure (SOP): Utility Coordination	
Purpose	<ol style="list-style-type: none">1. To establish a standardized, efficient, and collaborative process for coordinating with utility owners on all highway projects involving real estate acquisitions within the U.S. Virgin Islands, particularly those receiving Federal financial assistance through the Federal-Aid Highway Program.2. To streamline communication, minimize project delays, mitigate cost overruns associated with utility conflicts, and ensure the orderly relocation or protection of utilities within or adjacent to the Right-of-Way (ROW).3. To clearly define roles, responsibilities, and communication protocols among USVI government agencies (Department of Public Works, Department of Waste Management), utility owners (Water and Power Authority, Telecommunication Companies), design consultants, and contractors.

	<p>4. To ensure strict compliance with federal regulations, notably the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 23 CFR Part 645, Subpart A (Utility Relocations, Adjustments, and Reimbursement), and all applicable local laws.</p>
Scope	<p>1. This SOP applies to all USVI Department of Public Works (DPW) projects that involve right of way acquisitions within or adjacent to existing or proposed highway ROW, where the presence or relocation of public or private utilities is anticipated.</p> <p>2. This includes all projects funded wholly or in part by the Federal-Aid Highway Program.</p> <p>3. It covers the entire project lifecycle, from preliminary planning through construction and project closeout.</p>
Roles and Responsibilities	<p>1. Department of Public Works (DPW) - Project Sponsor:</p> <ul style="list-style-type: none"> - Overall project management and oversight. - Primary liaison with FHWA regarding project compliance and reimbursement. - Initiates and leads all utility coordination efforts. - Designates a Project Manager/Utility Coordinator as the primary point of contact. - Reviews and approves Utility Coordination Plans and Utility Relocation Agreements. - Ensures all real estate acquisitions for utility relocations comply with the RAMP and Uniform Act. - Processes utility reimbursement requests. - Facilitates communication and resolves disputes. <p>2. Waste Management Authority (WMA):</p> <ul style="list-style-type: none"> - Provides accurate 'as-built' records of wastewater and solid waste infrastructure within or near the project area. - Participates in design reviews and coordination meetings. - Develops and submits relocation plans and cost estimates for its facilities. - Performs timely relocation/adjustment of its facilities as agreed upon. - Ensures its relocation activities comply with project schedules and safety standards. <p>3. Water and Power Authority (WAPA):</p> <ul style="list-style-type: none"> - Provides accurate 'as-built' records for water and electrical infrastructure (underground and overhead). - Participates in design reviews and coordination meetings. - Develops and submits relocation plans and cost estimates for its facilities. - Performs timely relocation/adjustment of its facilities as agreed upon. - Ensures its relocation activities comply with project schedules and safety standards. <p>4. Telecommunication Companies:</p> <ul style="list-style-type: none"> - Provides accurate 'as-built' records for their communication infrastructure (fiber optic, copper lines, conduits, poles). - Participates in design reviews and coordination meetings. - Develops and submits relocation plans and cost estimates for

	<p>their facilities.</p> <ul style="list-style-type: none"> - Performs timely relocation/adjustment of their facilities as agreed upon. - Ensures their relocation activities comply with project schedules and safety standards. <p>5. Design Consultant/Engineer (DPW contactors):</p> <ul style="list-style-type: none"> - Responsible for detailed utility research and identification during design. - Conducts comprehensive conflict analysis between proposed highway design and existing utilities. - Assists DPW in developing the project-specific Utility Coordination Plan. - Incorporates utility data and agreed-upon relocation plans into final highway design. <p>6. Construction Contractor:</p> <ul style="list-style-type: none"> - Adheres to all utility protection measures specified in the contract documents. - Coordinates directly with utility owners for mark-outs and access during construction. - Immediately notifies DPW and relevant utility owners of any unforeseen utility conflicts or damages. - Responsible for damages to utilities caused by their operations. <p>7. Federal Highway Administration (FHWA):</p> <ul style="list-style-type: none"> - Provides guidance, oversight, and approves eligibility for federal reimbursement of utility relocation costs. - Reviews and approves Utility Relocation Agreements as per federal regulations.
Procedure	<p>1. <u>Phase 1: Planning and Preliminary Engineering:</u></p> <p>A. Project Scoping & Initial Utility Identification (DPW Lead):</p> <ul style="list-style-type: none"> - As soon as a project is identified, the DPW Project Engineer initiates preliminary utility involvement. - DPW sends an "Initial Project Notification and Data Request" letter to the Waste Management Authority, WAPA, and all relevant Telecommunication Companies operating in the project area. (Letter includes preliminary project scope, estimated limits, anticipated schedule, and requests for comprehensive 'as-built' utility records – including depths, material types, ownership — within the project limits). - Inspection of the project area is to be conducted to identify visible utility infrastructure (poles, manholes, etc.). <p>B. Design Data Collection & Conflict Analysis (DPW Oversight):</p> <ul style="list-style-type: none"> - Design Consultant incorporates received utility 'as-built' data into the preliminary highway design plans. - Perform a detailed conflict analysis to identify all potential clashes between proposed highway improvements and

	<p>existing utility facilities.</p> <p>C. Project Kick-off / Initial Utility Coordination Meeting (DPW Lead):</p> <ul style="list-style-type: none"> - DPW Project Manager schedules an initial coordination meeting with all affected utility owners (WMA, WAPA, Telecommunications), the Design Consultant, and other relevant staff. - Introduce the project, discuss preliminary design, confirm utility ownership, discuss potential relocation strategies, and establish preliminary timelines. - Establish clear points of contact for all parties, agree on communication protocols, and set expectations for Utility Owners response times. <p>2. <u>Phase 2: Right-of-Way (ROW) and Final Design</u></p> <p>A. Development of Utility Coordination Plan (UCP) (DPW Lead, with Utility Owner & Design Consultant Input):</p> <ul style="list-style-type: none"> - DPW, in collaboration with the Design Consultant, develops a comprehensive "Utility Coordination Plan (UCP)" for the project. - Provide a detailed list of all affected utilities, owners, and contact information. - Comprehensive analysis of all identified utility conflicts. - Proposed solutions for each conflict (e.g., relocation, adjustment, protection-in-place, design modification). - Preliminary cost estimates for each utility relocation/adjustment (provided by Utility Owners) - Detailed relocation schedules for each utility, integrated with the overall project schedule. - Identification of any new ROW needs specifically for utility relocations. - Utility Owners submit these engineering plans and cost estimates for relocation and adjustments to DPW for review and approval.
Communication Protocols	<p>1. Primary Contact:</p> <ul style="list-style-type: none"> - The DPW Project Manager assigned to each project will serve as the primary utility coordinator and point of contact for all Utility Owners. <p>2. Formal Correspondence: All formal communications (initial notifications, plan requests, agreement drafts) must be in writing.</p> <p>3. Communication Log: A central, dated "Utility Communication Log" must be maintained by the DPW Project</p>

	<p>Manager for all correspondence, phone calls, and meetings with Utility Owners.</p> <p>4. Escalation Procedure: In cases of unresponsiveness, significant delays, or unresolved conflicts, the DPW Project Manager shall escalate the issue to the Federal Highway Program Manager, who will coordinate with higher management to resolve communication issues.</p>
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VI. ROW PROJECT DEVELOPMENT PROCESS

A. PROJECT PLANNING AND INITIATION

1. All project standards must align with the National Environmental Protection Agency.
2. Right-of-way cost estimates are to be determined by the Federal Highway Program Manager and the lead Right of Way Specialist, based on the completed appraisals and careful consideration.

B. PROCUREMENT, FORM AND CONTENT OF APPRAISALS:

1. Procurement:
 - a. The procedures for obtaining appraisals and setting fees for appraisals shall be in accord with **49 CFR 24 Subpart B**, 49 CFR 18.36, **Procurement**, and guidelines that may be established and referenced herein.
2. Form and Format:
 - a. The form and format of an appraisal will depend largely on the complexity of the appraisal problem. At a minimum, an appraisal may be waived if the Right of way Program Manager determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$10,000 or less per [49 CFR 24.102 (a) (2)]. [Federal regulations allows for waiver of appraisal valuations if the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value of the acquisition is estimated at \$10,000 or less [49 CFR 24.102(c)(2)]. Also, the FHWA has used the authority of 49 CFR 24.7 to waive the \$10,000 limit, to a maximum of \$25,000.

The property owner or his designated representatives shall be given an opportunity to accompany the person performing the waiver valuation during his\her inspection of the property.

Some jurisdictions have adopted a "minimum payment" policy, which simply means all nominal acquisitions are offered at least a minimum acquisition amount. Agencies using this procedure typically offer a fixed minimum amount between \$100 and \$500 (\$500 is the upper limit of federal-aid participation). This policy may be administered in conjunction with the appraisal waiver process. At this time the minimum payment is \$300.00.

- b. Either a Detailed or a Minimum Standards form or format per 49 CFR 24.103 (a)

- c. The territory will comply fully with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended, and

specifically with 49 CFR 24.102, **Basic Acquisition Policies**, which included, among other things, that the property owner or his designated representatives shall be given an opportunity to accompany the appraiser during his\her inspection of the property.

3. Appraisers:

- a. The appraiser shall be predetermined as qualified and shall be appropriately licensed for the respective type of appraisal assignment. For partial takings or complex appraisal problems, the appraiser must be licensed with the Department of Consumer Affairs (USVI) as a "Certified General Appraiser". Other levels of licensing are appropriate for the less complex appraisals where there is no severance damage.
- b. If two or more appraisers are assigned to appraise the same property, they are to work independently and not confer or discuss their respective estimates and conclusions of Fair Market Value. Each appraisal report must be an independent product of the respective appraiser.
- c. If the appraisal is considered complex based on the knowledge and experience of the Right of Way Program Manager, two appraisal reports shall be required. However, if the need for a third appraisal on a property arises where federal funds are involved, prior FHWA approval shall be obtained.

[In the past, many agencies have used dollar thresholds to determine if two appraisals are needed on an acquisition. This is considered a more realistic approach. The number of appraisals should be dictated by the appraisal problem. Generally, the more complex and sophisticated the appraisal problem, the greater the need for two appraisals. This operating procedure can save time and money by eliminating unnecessary appraisals.]

B. REVIEW OF APPRAISALS:

- a. All appraisals involving Federal funds shall comply with 49 CFR 24.104, review of appraisals. The approved “Estimate of Fair Market Value” shall be the basis for an “Offer of Just Compensation”. The final determination for an amount approved as just compensation is the responsibility of the Right-of-Way Program Manager, subject only to a court decision otherwise (in the event of condemnation award).

C. CONDUCT OF NEGOTIATIONS:

1. All negotiations will be in accordance with 49 CFR Part 24, Subpart B, **Real Property Acquisition**, with specific attention to:
 - a. A reasonable effort shall be made to acquire each property expeditiously by negotiations.
 - b. Promptly after the approval of the appraised Fair Market Value estimate, the Commissioner of Public Works will have the initial written offer of Just Compensation furnished to the owner along with a Summary statement that provides the owner with the basis for the offer of just compensation.
 - c. Reasonable efforts shall be made to contact the owner or his designated representative to discuss the offer to purchase the property, including the basis of the offer of just compensation, explain the Governments acquisition policies and procedures, including its payment of incidental expenses in accordance with 49 CFR 24.106.
 - d. The owner shall be given a reasonable time to consider the just compensation offer, and the Government shall consider updating the offer of just compensation if the owner presents information indicating the need for a review of the approved appraisals, a material change in the character of the property has occurred, or if a significant delay has occurred since the time of the appraisal.
 - e. The Government shall not take any coercive action in order to induce an agreement on the price to be paid for the property.
 - f. The Commissioner of Public Works or an official designee, being the authorized and designated Government Official, may approve all Administrative Settlements which amount may exceed the approved just compensation offer if reasonable efforts to negotiate an agreement at that amount have failed; the administrative settlement amount must be reasonable, prudent, and in the public interest; the Commissioner will be responsible for the proper documentation to support the administrative settlement as

provided by Attachment No. 3. Although his decision are subject to review by the Governor, he may seek the advice of others, the Commissioner of Public Works or an official designee, will sign all administrative settlements. Administrative Settlements include properties initially estimated at \$10,000 or less and after good faith efforts at negotiating at that amount and with proper justification may exceed the Territory's amount. See paragraph C. (2) above.

- g. The property owner must be paid by the Government prior to taking possession of the property, or in the case of benefit of the owner, of the property, or in the case of a condemnation a deposit with the court, for the benefit of the owner, of the full amount of the approved appraised value or an amount so designated by the court. When exceptional circumstances require, with the approval of the owner, the Government may obtain a Right-of-Entry for construction purposes before making payment available to the owner. This should not become regular practice and should only be used on a case-by-case basis.
- h. The Government shall offer to buy Uneconomic Remnant along with the property needed for the project.
- i. The Government shall not intentionally make it necessary for the owner to initiate an Inverse Condemnation action to prove the fact of the taking of the real property.
- j. If the Government rents the acquired property to the former owner or tenant, it shall not charge any rent that would exceed that charged to a short term occupier.
- k. The negotiator, acquisition agent, shall maintain a legible record of the negotiations, including each contact with the property owner or his representative.

D. LEGAL SETTLEMENTS AND COURT AWARDS:

1. Legal Settlements:

For the purpose of this memorandum, a legal settlement is any settlement made by the responsible official after the matter has been referred to the Territory's legal offices with a recommendation for condemnation action. This includes stipulated

settlements approved by the Court in which the condemnation action has been filed. The legal office or official designated to make legal settlements is the Attorney General's office.¹

2. Court Awards:

Where an award, after contested trial on the merits, is substantially in excess of the Territory's high testimony, and it is apparent to the trial counsel that the award includes elements of value, damages, or costs which are not eligible for Federal participation he should advise the Commissioners of Public Works of the ineligible items.²

E. RELOCATION ASSISTANCE AND PAYMENTS TO DISPLACED FAMILIES AND BUSINESS AND EXPENSES INCIDENT TO TRANSFER OF TITLE:

1. The total relocation program, including compliance with Section 303, Title III of the Uniform Act as amended and 49 CFR Part 24, will be administered by the Department of Public Works. This includes determination of eligibility, computation of benefits, verification of claims, and the providing of the service or assistance and aid incident to proper, humane relocation of families, individuals, and businesses.
2. Procedures as promulgated by FHWA will be employed (See Attachment 8).
3. The presentation of offers of replacement housing supplements will be compatible with timing of offers of compensation to the owners of residential properties, and within a reasonable time, prior to actual displacement, when the displaced person will be actively looking for a replacement dwelling. At the initiation of negotiations with owner-occupants an explanation of the types of benefits available will be furnished. If tenants are living in the dwelling, they will receive a written explanation within 7 days from when the owner receives it.

F. PROPERTY MANAGEMENT:

The VIDPW hereby assures that all real property within the boundaries of a federally-aided facility will be devoted exclusively to the purposes of that facility and preserved free of all other public or private alternative uses, unless such alternative uses are

²See attachment 5

permitted by Federal regulation or the FHWA. An alternative use must be consistent with the continued operation, maintenance, and safety of the facility, and such use shall not result in the exposure of the facility's users or others to hazards.

In the event the VIDPW determines that real property interest is no longer needed coordination among relevant VIDPW organizational units, including maintenance, safety, design, planning, right-of-way, environment, access management, and traffic operations shall be established prior to final disposition.

The VIDPW shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in 23 CFR 710.403 (c).

The Federal share of net income from the sale or lease of excess real property shall be used by the VIDPW for activities eligible for funding under title 23 of the United States Code.

No FHWA approval is required for disposal of property, which is located outside of the limits of the right-of-way if Federal funds did not participate in the acquisition cost of the property.

Leasing of real property acquired with title 23 of the United States Code, funds shall be covered by an agreement between the VIDPW and lessee, which contains provisions to ensure the safety and integrity of the federally funded facility. It shall also include provisions governing lease revocation, removal of improvements at no cost to the FHWA, adequate insurance to hold the VIDPW and the FHWA harmless, nondiscrimination, access by the VIDPW and the FHWA for inspection, maintenance, and reconstruction of the facility. Where proposed use requires changes in the existing transportation facility, such changes shall be provided without cost to Federal funds unless otherwise specifically agreed to by the VIDPW and the FHWA. Proposed uses of real property shall conform to the current design standards and safety criteria of the Federal Highway Administration for the functional classification of the highway facility in which the property is located. See 23 CFR 710.405.

If occupants are allowed to remain on or utilize property after acquisition by the Territory, fair market rent shall be established and collections properly accounted for and credited to the project.

G. DISPOSITION OF RIGHT-OF-WAY

Real property interests determined to be excess to transportation needs may be sold or conveyed to a public entity or to a private party in accordance with 23 CFR 710.409.

Federal, State, and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes, and when such a transfer is allowed by State law. When this potential exists, the VIDPW shall notify the appropriate resource agencies of its intentions to dispose of the real property interests. The notifications can be accomplished by placing the appropriate agencies on the VIDPW disposal notification listing.

Real property interests may be retained by the VIDPW to restore, preserve, or improve the scenic beauty and environmental quality adjacent to the transportation facility.

Where the transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA, the deed shall provide for reversion of the property for failure to continue public ownership and use. Where property is sold at fair market value no reversion clause is required. Disposal actions described in 23 CFR 710.403(e) for less than fair market value require public interest determination and FHWA approval, consistent with that section.

The Right of Way Program Manager shall maintain an inventory of know properties acquired using FHWA funds.

H. AVAILABILITY OF DOCUMENTS AND FILES TO FHWA

FHWA personnel shall be permitted access to all documents, records, appraisals, negotiation reports, relocation studies, etc., for review, audit, and, where appropriate, approval purposes.

I. CIVIL RIGHTS

The right-of-way acquisition and relocation functions shall be conducted in such a way and manner as to assure that no person shall, on the grounds of age, race, color, sex or national origin, be excluded from participation in, be denied the benefits off or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the Federal Highway Administration (FHWA). (49 CFR, Part 21, Title VI, of the Civil Rights Act of 1964, as amended in 1973, Section 162a of the Federal-Aid Highway Act, Section 324, which includes prohibition of discrimination based on gender and Handicap).

VII. FHWA DIRECTIVES:

The preceding items discussed identify the most significant elements to be complied with by the Government of the Virgin Islands. It is not intended to be all inclusive. The various FHWA recommendations included in Attachment I will be given meaningful implementation to the extent practicable. Reference to Federal Law, the Code of Federal Regulations, (CFR) Federal-Aid Policy Guide (FAPG), Project Development Guide (PDG) and Directives is intended to ensure compliance with applicable Federal

requirements. Such guidance will be employed by FHWA in monitoring Territorial accomplishments.

Notwithstanding the guidance provided by FHWA directive material, all elements reflecting literal provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, must be fully met. “Assurances from the Commissioner of Public Works, dated October 2, 1989, make provision for compliance there with. Eligibility for reimbursement on federally aided projects shall be ascertained, based upon compliance with the “Uniform Act”, as amended, and the Territorial assurances.

It is agreed that where problems arise pertaining to Federal requirements of interpretation, contact will be made promptly with the FHWA in an effort to resolve the problems.

VIII. TRAINING AND CAPACITY BUILDING:

- A. The Right of Way team is required to take annual training courses on Uniform Act and Right of Way procedures.

ATTACHMENT 1

RECOMMENDATIONS SELECTION OF APPRAISERS AND SETTING OF FEES

It is recommended:

1. That the Department Public Works (DPW) be responsible for performing all right-of-way functions on all Federal-Aid roadway projects.
2. That a careful screening be made of appraiser talent and experience to identify likely appraiser consultants in the Virgin Islands. If the number of appraiser consultants is inadequate, the area of solicitation will be expanded to other areas, i.e., Puerto Rico and/or mainland U.S.A.
3. That the appraisers be contacted and asked if they would be willing to make reports in accordance with more demanding Territorial requirements.
4. That interested appraisers submit examples of their work (appraisals made in the past) and references (people for whom the appraiser has made appraisals).
5. That the best available appraisers, select two or three to begin the program.
 - a. Show them plans and identity of property.
 - b. Explain what reports must include and documentation; those reports must be independently prepared.
 - c. Have Territory representative familiar with fees make an estimate of the reasonable fee paid for each parcel.
 - d. Ask appraisers to submit their own estimate of what a reasonable fee would be for each parcel.
 - e. Arrive at a fair and equitable fee for the whole job.

ATTACHMENT 2

DEPARTMENT OF PUBLIC WORKS

APPRAISALS, FORMATS, STANDARDS, AND WAIVERS

FHWA

Office of Real Estate Services - Project Development Guide
Chapter 7

Property Valuation

ATTACHMENT 3

ADMINISTRATIVE SETTLEMENTS

The commissioner of Public Works or an Official Designee will approve all administrative settlements, which have been determined to be in the public interest, are adequately documented, and have a sound basis. Indiscriminate use of this method of settlements is not to be implied and should not be used to avoid litigation only because of the cost of a trial. In arriving at a determination to make administrative settlements the official responsible should carefully review the parcel file, consideration to all pertinent information including:

1. All available appraisals including owners, if known.
2. The approved estimated of just compensation.
3. Recent court awards for similar type property.
4. The negotiators recorded information.
5. The amount of probable testimony should a condemnation action be filed.
6. The estimate of trial cost.
7. The opinion of legal counsel, if appropriate.

After review and consideration of the above information, the responsible official, either the Commissioner of Public Works or an Official Designee, will in all instances, set forth in writing their reasoning for the administrative settlement amount approved. It is recognized that the reasoning for the establishment of any administrative settlement amount is a judgmental determination; however, it should be consistent with the situation, circumstances, and the amount of money involved. The file shall indicate that the approved amount was established prior to an agreement with the owner. An approval, by the responsible official, may be oral, with subsequent written verification placed in the file prior to payment.

Non-compensable Items

Should the settlement include payment of items considered as typically non-compensable in eminent domain, the amounts paid for such items shall be established by the territory and excluded from its claim for federal participation. Items considered as typically non-compensable in eminent domain include personal property, loss of business or good will, circuitry of travel, diversion of traffic, owners' legal court and witness fees, etc.

ATTACHMENT 4

LEGAL SETTLEMENTS

The territory shall designate in its right-of-way manual or procedures, the legal office or official responsible for making legal settlements. The designated legal representative may make a settlement when it is determined that such action is in the public interest. In arriving at a determination that a legal settlement is warranted, the representative responsible should:

- * Review the entire appraisal assembly.
- * Review the acquisition process conducted by the right-of-way section.
- * Consult with appropriate right-of-way personnel.

Documentation for legal settlements:

- a. It is recognized that after a case is referred to the Territory's legal counsel, he is responsible for subsequent negotiations, selection of witnesses, settlements, etc. There should be, however, close collaboration between legal and right-of-way personnel prior to settlement of any case for an amount substantially in excess of that established as just compensation.
- b. Any case referred to the Territory's legal counsel where the valuation estimate is predicated on an improper legal premise as determined by the responsible legal representative, or any case requiring revised or new appraisals, should be returned to the right-of-way section for further action as deemed appropriate. If time does not permit or other extenuating circumstances preclude such action, the files should contain an explanation of the particular factual situation and the attorney should proceed with whatever action he/she considers appropriate for resolving the inconsistency within the authority delegated to him.
- c. Legal settlements involving elements not based in law, such as revised or new appraisal data should be coordinated with the appropriated official of the acquiring agency for his/her concurrence. Such concurrence should be secured prior to consummating same. A statement signed by both the legal counsel and responsible territorial official should be placed in the appropriate territorial file.
- d. Many legal settlements are based solely upon the attorney's interpretation of legal principle and legal problems associated with the particular property under condemnation. The trial attorney shall obtain the prior approval of the attorney in charge of litigation to settle any case for an amount in excess of that previously authorized or upon any new, additional, or unusual terms or conditions. The trial attorney shall place in the file a summary of the problem and his/her reasoning and rationale for the settlement, with supporting data as appropriate.

ATTACHMENT 5

DOCUMENTATION FOR COURT AWARDS

1. Where an award after contested trial on the merits is substantially in excess of the Territory's high testimony, and it is apparent to the trial counsel that the award includes elements of value, damages, or costs which are not eligible for federal participation he/she should advise the Commissioner of the Public Works to have the approved appraisals reviewed along with the record of trial, and after consulting with the trial counsel, make a determination of what part of the award is ineligible for federal participation. Federal funds will participate in the award reduced by the value of the ineligible items.

2. The trial attorney shall place in the file a brief trial report. If an award is substantially in excess of the reviewing appraisers estimate of fair market value (after elimination of ineligible items, if any), federal funds will not participate in the difference unless there is supporting documentation in the appropriate territory file which includes:

- (1) A trial report of the trial attorney, signed by him, containing, but not limited to, the following information concerning the proceedings:
 - (a) Caption of the case
 - (b) Approved estimate of value and date
 - (c) All appraisal estimates of value and dates
 - (d) Date, place, and length of trial
 - (e) A brief factual report of the trial, including range of value testimony by the parties, etc.
 - (f) A statement of the major issues involved and the development thereof
 - (g) A description of the major differences, if any, in approaches to value among the Territory's witnesses and those of the landowner
 - (h) An explanation of any substantial variance between the review appraiser's estimate of fair market value and the Territory's last testimony
 - (i) Comments on possible legal error in the record and explanation of the Territory's action regarding motions, objections, etc., and the court's rulings relative thereto
- (2) Recommendations of the trial attorney regarding motions for new trial; remitted and appeal, and his/her reasons, therefore.

- (3) A signed statement of the legal counsel in charge of representing the territory in condemnation litigation, stating his/her concurrence in the reasoning and disposition of the case.

ATTACHMENT 6

PROCEDURES TO SATISFY PRELIMINARY RIGHT-OF-WAY NEEDS FOR PROJECT DEVELOPMENT

A. Right-of-Way Plans (Must be prepared with project identification that will satisfy federal and V.I. requirements)

1. Plans must show project alignment, including:
 1. Centerline and limits of existing and proposed right-of-way
 2. Construction limits
 3. Terrain features
 4. Property lines
 5. All pertinent data affecting the cost of right-of-way such as structures, land services facilities, driveways, access roads, improvement fences, underground tanks, easements, encroachments, etc.
 6. For each ownership, plans will include:
 - (1) Owner's name
 - (2) Parcel Identification
 - (3) Areas are to be shown on plans for each total ownership, the respective take and any remainders. Areas should be reflected in square feet and/or acres.
7. Direction arrow (North)
2. Plans should have a title sheet, including a project location map.
3. There should be an inset showing total ownership when a property size is too large to fit on a plan sheet at scale.

B. Title Search

1. Provide the Department of Public Works with information from the title search including a copy of the most recent deed for each ownership of record, and a legal description (metes & bounds) for each respective parcel needed for the project, if requested.
2. Prepare and Record with the V.I. Government, Plot Drawings of each ownership affected by the project (Each drawing must be sufficient to meet the requirements of Cadastral for recording)

1. Record the final drawings with Cadastral which will accurately reflect any permanent changes of ownership caused by the project. Submit to Cadastral the following for each recording:
 1. Two reproducible mylars or linens (if required by Cadastral Office)
 2. Three blue line drawings
 3. One set of legal descriptions (metes & bounds)
 4. Submit a standard V.I. request signed by both the surveyor (who physically surveyed the property) and the Commissioner of Public Works.
2. All metes and bounds on plot drawings must follow a clockwise direction, and agree with the plan sheets, and legal descriptions.

C. Stake all or part of the Right-of-Way

1. The Department of Public Works, or its agent, will stake designated rights-of-way immediately following a request from the right-of-way program manager when it is determined there is justification to meet the needs of either the appraisal or the negotiation function. (The minimum probable need for staking will be at least once for the total project, and at least once for parcel affected by significant right-of-way change).

ATTACHMENT 7

RIGHT-OF-WAY NEGOTIATION

1. The assignment package for negotiations should be prepared in triplicate [one copy delivered to the negotiator, one copy for the Department of Property and Procurement (DP&P), to be delivered at the same time offer letters are submitted for signature and one copy retained for the right-of-way file]. It should include, at minimum, the following items:

1. Letter of assignment
 1. Project identification
 2. Instructions
2. Right-of-way plats
3. Title reports
4. The approved appraisals (including reviewers' determination)
5. Legal description
 1. Metes and bounds
 - (1) Before
 - (2) Takings
 - (3) Remainders
2. The Negotiator will
 1. Set up an active negotiation file for each parcel.
 2. Initiate parcel diaries for relating to negotiation contacts, and other chronological information as it occurs;
 3. Prepare the offer letter(s) for signature of the Commissioner of Property and Procurement (DP&P);
 4. Deliver the offer letters to the Department of Property & Procurement for the Commissioners signature along with a copy of the assignment package;

5. Prepare copies of each approved offer letter (at a minimum, the original for delivery to the owner, one copy for the Director Office of Highway Engineering and one for the Right-of-Way file);
 6. Check deed files for encumbrances;
 7. Check assessors' records for tax number, and up paid taxes;
 8. Review and become familiar with right-of-way and construction plans;
 9. Contact local parcel owners for appointment, and then
 1. Arrive promptly;
 2. Show the plans;
 3. Explain the effects the project will have on the owner's property interests, including relocation entitlements;
 4. Present the owner with a package which will include information regarding property owner rights, the offer letter with a summary statement, a plat of the taking, a metes and bounds description(s), and a copy of the title report, and;
 5. Obtain acknowledgment from the owner documenting delivery date of the offer letter;
 10. Contact off-island owners by certified mail, return receipt requested.
 11. Assure the right-of-way file is periodically updated to include all current documents relating to negotiation activities.
3. If the offer is acceptable to the owner, the negotiator will:
1. Obtain the acceptance in writing, either properly witnessed by two people or officially notarized;
 2. The administration section of PWD is requested to obtain a check from the Department of Finance (included in the request must be the property owner's address and either an official tax identification number, or social security number);
 3. Warranty Deeds, Permanent Easements, Temporary Easements, Right-of-Entry, etc., are prepared for the owner's signature.

4. Obtain certification from the Department of Finance that property taxes are paid current.
 5. Obtain proof that all encumbrances have been cleared;
 6. At an arranged closing, obtain owner(s) signature, appropriately witnessed and notarized on the final documents, and at the same time deliver payment (delivery by a person other than the negotiator);
 7. Deliver all of the necessary documents to Cadastral for recordation.
4. If the offer is rejected the negotiator will either
1. Recommend an administrative settlement when it is a reasonable and supportable alternative to condemnation; or,
 2. Prepare a condemnation package.
5. All of the negotiator's files will be incorporated into the project file when the negotiation function is completed.

Encumbrances

The negotiator will work with the owner to clear liens, arranging for any required payments. Once title is clear of all encumbrances, a deed will be prepared for execution by the owner(s).

Administrative Settlement

The negotiator will prepare a letter to DP&P with sufficient documentation to support an administrative settlement (see CFR 49 subpart B section 24.102 (i). If there is no reply within ten days, the Commissioner of Public Works Department (PWD) may determine whether an approval is justified. (The authority for this decision is found in U.S.V.I. Code, T.20, Section 3(a), Highways.)

Condemnation

Prepare a transmittal letter to the attorney general with the condemnation package (official request for condemnation), including a copy of the approved appraisal, metes and bounds description(s), title search information, the respective plan sheets and plats.

Attachment 8

FHWA

Office of Real Estate Services - Project Development Guide Chapter 10

REVISION PENDING

MAP-21 revised the replacement housing benefits in this section as follows:

\$22,500 or \$5,250 are now \$31,000 or \$7,200 for residential displaced persons

Eligibility requirement for owner occupants is now 90 days rather than 180 days.

Attachment 9

CERTIFICATION CONCERNING LEGAL RESIDENCY IN THE UNITED STATES

[Please read the instructions below before completing this form]

I. RESIDENTIAL DISPLACEES

	(1) Number of <u>Occupants</u>	(2) Number of <u>Citizens</u>	(3) Number of Aliens <u>Lawfully Present</u>
a. Individual or Family:	_____	_____	_____

II. NON-RESIDENTIAL DISPLACEES

	(1) Number of <u>Owners</u>	(2) Number of <u>Citizens</u>	(3) Number of Aliens <u>Lawfully Present</u>
a. Sole Proprietorship or Partnership:	_____	_____	_____

b. Corporation:

I certify that _____ (name of corporation) _____ is established pursuant to State law and is authorized to conduct business in the United States.

Instructions:

- 1. Please address only the category (individual, family, corporation, etc.) that describes your occupancy status.*
- 2. Please note: If columns (2) plus (3) do not equal column (1), a reduction in the relocation payment(s) for which the displaced entity would otherwise be eligible may be indicated.*
- 3. For item II. a include only owners who reside in the United States.*
- 4. Your signature on this form constitutes certification.*

Name (Print)

Signature

Date

**CERTIFICATION CONCERNING LEGAL RESIDENCY
IN THE UNITED STATES**

[Please read the instructions below before completing this form]

I. RESIDENTIAL DISPLACEES

- a. Individual. I certify that I am (check one): a citizen of the United States ____ ; an alien lawfully present in the United States ____.
- b. Family. I certify that there are ____ persons in my household and that ____ are citizens of the United States and ____ are aliens lawfully present in the United States.

II. NON-RESIDENTIAL DISPLACEES

- a. Sole Proprietorship. I certify that: (check one) I am a citizen of the United States ____ ; I am an alien lawfully present in the United States ____ ; I am a non-U.S. citizen not present in the United States ____.
- b. Partnership: I certify that there are ____ partners in the partnership and that ____ are citizens of the United States, ____ are aliens lawfully present in the United States, and ____ are non-U.S. citizens not present in the United States.
- c. Corporation. I certify that ____ (name of corporation) is established pursuant to State law and is authorized to conduct business in the United States.

Instructions:

- 1. Please address only the category (individual, family, corporation, etc.) that describes your occupancy status.*
- 2. For items I.b. and II.b above, please fill in the correct number of persons.*
- 3. The certification for a non-residential displacee may be signed by an owner or other person authorized to sign on its behalf.*
- 4. Your signature on this (or the claim) form constitutes certification.*

Name (Print)

Signature

Date

Attachment 10

FHWA REQUIRED REVIEWS, APPROVALS AND CONCURRENCES

R/W	Right-of Way				
1.	Authorization to Acquire	23 CFR 710.307	R & A – DO	Project by project.	R/W Prog Mngr
2.	State R/W Manual changes	23 CFR 710.201	R & A – DO	Jan. 1, 2001 & every 3 years thereafter	R/W Prog Mngr
3.	Uniform Relocation Assistance and Real Property Acquisition Report - (OMB Form 2125-0030)	49 CFR 24.9(c) and Appendix B	R – DO	Every 3 years	R/W Prog Mngr
4.	Requests for waivers	49 CFR 24.7	R-DO A-HQ	As submitted by State	R/W Prog Mngr
5.	Local Public Agency Oversight	23 CFR 710.201(h)	State takes action	As needed	R/W Prog Mngr
6.	Real Property Acquisition Report (form FHWA 1434)	FHWA Order 6540.1	R-DO Submit-HQ	Annually by Nov. 15	R/W Prog Mngr
7.	Use of R/W Air Space authorization request (on Interstate system)	23 CFR 710.405	R & A - DO	Project by project	R/W Prog Mngr
8.	Use of R/W Air Space authorization request (off Interstate system)	23 CFR 710.405	State takes action	As needed	R/W Prog Mngr
9.	Access Break / R/W Disposal authorization request (if on Interstate system or fair market value not charged)	23 CFR 710.401 & 409	R & A - DO	Project by project	R/W Prog Mngr
10.	Access Break / R/W Disposal authorization request (if <u>not</u> on Interstate system and fair market value charged)	23 CFR 710.409	State takes action	As needed	R/W Prog Mngr
11.	Functional Replacement	23 CFR 710.509	FHWA DO Concurrence (State takes action)	As needed	R/W Prog Mngr
12.	Outdoor Advertising policies and procedures revisions	23 CFR 750.304	R & A – DO	As needed or submitted by State	R/W Prog Mngr
13.	Outdoor Advertising sign removal projects	23 CFR 750.307	R & A – DO	Project by project	R/W Prog Mngr
14.	Outdoor Advertising report (form FHWA 1424)	23 CFR 750.308	R-DO Submit-HQ	Annually (When Acquisition & Removal occurs)	R/W Prog Mngr
15.	Lead Agency Uniform Act monitoring activities	49 CFR 24.603	R for C – DO&HQ	As needed	R/W Prog Mngr
16.	Develop R/W oversight agreement	23 CFR 710.201(i)	R & A – DO	By Jan. 1, 2001 and updated as needed	R/W Prog Mngr
17.	Waiver to charging current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding.	23 CFR 710.403(d)	R & A – DO	Case by case.	R/W Prog Mngr
18.	Transfer of properties to other agencies at less than fair market value for continued public use is clearly justified as in the public interest and approved by the FHWA	23 CFR 710.409(d)	R & A (if FA funds) - DO	Case by case.	R/W Prog Mngr
19.	Appraisal waiver limit.	49 CFR 24.102(c)	R-DO A-HQ	R/W Manual	R/W Prog Mngr
20.	Federal Land Transfers.	23 CFR 710.601(e)	R & A - DO	Case by case.	R/W Prog Mngr
21.	Reimbursement for early acquisition costs.	23 CFR 710.501(c)	R & A - DO	Case by case.	"
22.	Protective buying and hardship acquisition.	23 CFR 710.503	R & A - DO	Case by case.	"
23.	Waiver availability of comparable replacement dwelling.	49 CFR 24.204(b)	R & A - DO	Case by case.	"
24.	Fixed Moving Schedule	49 CFR 24.302	R & A - DO	Annually	"
25.	Use of R/W for non-highway purposes.	23 CFR 1.23(c) & 710.403	R&A – DO	Case by case.	D.A.
26.	R/W availability statements & certifications.	23 CFR 635.309 & 710.311	R & A - DO	Project by project.	R/W Prog Mngr

Revised 4/11/02 R = Review A = Approve C = Comment DO = Division Office HQ = Headquarters

Attachment 11

R/W Service Contract Guide

A GUIDE FOR DEVELOPING A RIGHT-OF-WAY SERVICE CONTRACT

Responsibilities of the State or LPA

The following issues should be considered by States and LPA=s when developing all right-of-way services contracts:

Name a project coordinator. This person is the lead contact person for the Agency.

Name a project manager who has final authority for the Agency. This person has authority for all matters regarding this contract.

Determine a pay schedule for the consultants. Determine what documentation is needed in order to make progress payments.

Address revisions and/or corrections of work products, to be completed to the satisfaction of the Agency. Address accuracy of work, timeliness, errors and omissions. Work should be acceptable to the project manager.

Provide for a process to amend the contract, if and when needed. Amendments should be in writing.

Provide a statement to terminate the contract. This should specify that the consultant is to deliver all documents and completed material to the Agency if the contract is terminated.

Provide for appeals on relocation matters. The Agency should provide for prompt review of appeals in accordance with applicable law. The Agency should make a written determination of the appeal including explanation and furnish the person making the appeal a copy.

Provide for appearance in court and at meetings, if needed. Compensation for preparation and appearance in court should be provided for and agreed to by the Agency.

Provide an incentive/disincentive clause for completion of work on the project. Decide whether to compensate the contractor an amount of money for each day's work is completed ahead of schedule and/or assess a deduction for each day the contractor overruns the completion date.

Provide for disadvantaged business (DBE) program requirements, as applicable.

Provide a specific list of what materials are to be provided to the contractors. This includes materials such as right-of-way plans, plats, title information, appraisals, and appraisal reviews. These should be provided within the agreed upon time frame.

Provide guidance regarding the process to be used to resolve problems caused by the untimely submission of such materials, or materials that are inadequate or defective.

Provide specifications for certain experts, when needed, such as certified relocation specialists.

Provide specifications regarding the project office, when needed, or specifications that personnel are to be available locally during certain set hours.

Responsibilities of the Consultant

Name a project manager. This person is the consultant's project manager, contact person, and authority on matters for this contract.

Assure compliance with laws, regulations and ordinances. The consultant is to comply with all applicable Federal, State and local laws, regulations, and ordinances. Describe quality control and quality assurance programs used by the contractor to ensure compliance.

Provide equipment to perform the contracted services. Agree upon office furniture and copies of documents to be provided by the Agency. Address the need for an on-site right-of-way office.

Assure that the qualified personnel identified in the RFP are used to perform the work. This provision provides that the contractor will identify any changes to personnel working on the contract, and their qualifications. This notification will be provided to the contracting agency in advance of changes. The contracting agency should retain the ability to question, with cause, any such assignments.

Schedule the order of activities on the project. A progress schedule should be provided the Agency when work commences. A Gantt chart can be used, for example.

Submit progress reports for payment, as specified in the contract.

Complete required work on parcels, with documentation in files, on or before the completion date.

Indemnify the agency of all claims. The consultant should indemnify and save harmless the Agency and its officers by providing an insurance policy to cover their activities.

Adhere to provisions regarding subcontractors. The consultant should not sublet or transfer any work without the advance approval of the Agency.

Assure availability of records and staff to the State DOT and FHWA.

Comply with nondiscrimination provisions specified in the contract.

Methods of Procurement

A State is to use the same procedures it uses on non-Federal projects. States in which contractors are paid by billable hours use pre-award audits where overhead rates are agreed upon prior to the notice to proceed with work. Care is used when reviewing contractor billings to ensure that charges accurately reflect the contractor's progress toward project completion.

Agency contracting procedures determine how fees are to be paid, subject to rules and regulations promulgated by the State. These may allow payments based on hours, parcels, ownership, qualifications based negotiation, lump sum, low bid, cost plus fixed fee (with or

without a specified upset limit), per diem with upset limit, or retainer contracts, as long as the means are allowed under State procedure. Common methods of procurement are:

1. **1. Combined Qualifications Based and Competitive Negotiations (Two Step).** This method combines qualifications-based negotiation with competitive negotiations. It qualifies as a competitive negotiation method for those agencies that cannot use qualifications-based negotiations alone. The first step begins with a request for proposals. Discussions regarding qualifications, staffing, scheduling, delivery of a quality product, and work experience occur during this phase. The most highly qualified contractors are selected and are asked to submit a bid, which is step two. It is the bidding process that qualifies this method as a competitive procurement.
2. **Competitive Proposals.** Under this technique more than one source submits an offer and either a fixed-price or cost reimbursement contract is usually awarded. If this method is used, the following usually apply:
 - Requests for proposals are publicized, and all significant evaluation factors and their relative importance are identified.
 - Proposals are evaluated.
 - Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
3. **Noncompetitive Proposals (Sole Source).** This technique allows solicitation of a proposal from only one source. This sometimes occurs when, after solicitation of proposals from a number of sources, competition is determined inadequate. This method is usually used when one of the following applies:
 - The item is available only from a single source.
 - Public need will not permit the delay resulting from competitive solicitation.
 - After solicitation of a number of sources competition is inadequate.
4. **Qualifications Based Procedures.** For this method, procedures often state that professional services will be solicited from an adequate number of qualified sources without regard to price. When using this method, a fair and reasonable price is negotiated after the best qualified firm is selected. If an agreement on price is not reached, negotiations begin with the next best-qualified firm.
5. **Sealed Bids.** Under this technique bids are publicly solicited, and a fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms to the material terms and conditions of the invitation for bids and is lowest in price.
6. **Small Purchase Procedures.** These are relatively simple procurement methods for securing services, supplies, or other property in which costs often do not exceed a threshold amount. When small purchase procedures are used, price or rate quotations are usually obtained from an adequate number of qualified sources.

Attachment 12

Functional Replacement of Real Property in Public Ownership

A12.1 When lands, buildings, or other improvements are needed for transportation purposes, but are held by a governmental entity and utilized for public purposes other than transportation, the Department may compensate the entity for such properties by providing functionally equivalent replacement facilities. The provision of replacement facilities may only be undertaken with the agreement of the governmental entity affected.

A12.2 Costs of increases in capacity and other betterments are not eligible for reimbursement except those necessary to replace utility; those required by existing codes, laws, and zoning regulations; and those related to reasonable prevailing standards for the type of facility being replaced.

A12.3 When functional replacement is considered, the following conditions must be met:

- (A) The property to be replaced must be publicly owned;
- (B) The use of functional replacement must be in the public's interest. This is the consideration that the public interest is well served by the functional replacement and that the proposed solution is cost effective. There must be a clear showing that the public function to be replaced is essential to the affected community;
- (C) On projects pursuing federal participation in right of way, FHWA must agree that functional replacement is in the public's interest and must concur with the Department's assessment of its use;
- (D) On projects pursuing federal participation in right of way, FHWA must grant authorization to proceed with functional replacement prior to incurring any functional replacement costs;
- (E) The functional replacement must actually take place, the costs of replacement must actually be incurred; and
- (F) Replacement sites and construction must be in compliance with existing codes, laws, and zoning regulations for the area in which the facility is located.

A12.4 All publicly owned real property must be identified during the project development and environmental phase of a project. When publicly owned land must be acquired for a project, notification shall be submitted to the Right of Way Officer at the earliest practicable time. The Right of Way Officer after consultation with the Highway Program Manager will make the determination of whether the acquisition of the property using functional replacement is feasible.

A12.5 During the early stages of project development, when functional replacement is being considered, the following must occur:

- (A) Representatives from the Federal Aid Highway Program must meet with representatives of the owning agency to discuss the effect of a possible acquisition and potential application of functional replacement; and
- (B) The results of these discussions and any decisions resulting from them shall be included in the Environmental Document.

A12.6 At the earliest practicable time, the Department will have the exiting facility's real property appraised and shall establish an amount it believes to be just compensation. The parcel and the appraisal shall be reviewed in accordance with the requirements of the ***Right of Way Manual, Section V. C. and V. D.*** Appraisal may be waived with the approval of FHWA when it is apparent that the cost of the Functional

Replacement will exceed the appraised value.

A12.7 After just compensation for the parcel is established, the Right of Way Officer shall advise the owning agency, in writing, of the amount. The owning agency shall have the option of accepting the just compensation established by the appraisal process or accepting functional replacement.

A12.8 The owning agency may waive its right to have an estimate of compensation established by the appraisal process if it prefers functional replacement.

A12.9 When an owning agency selects a functional replacement of an existing facility, a written request for functional replacement must be provided to the Department. The Right of Way Program Manager shall be responsible for obtaining the written request of the functional replacement of the existing facility from the owning agency.

A12.10 In all cases when functional replacement is utilized the Department shall be responsible for review of the plans, specifications and estimates to ensure that betterments are not included.

A12.11 On projects pursuing federal participation in right of way, if functional replacement is selected, the Right of Way Officer shall submit, through the Commissioner, a specific request to FHWA for concurrence in the use of functional replacement. The request should include the following, if available:

- (A) The cost estimate data for the replacement;
- (B) Any agreements reached at meetings between the Department and the owning agency;
- (C) An explanation of the basis for the request; and
- (D) A statement that any replacement property will be acquired in accordance with the provisions of the ***Uniform Relocation Assistance and Real Property Acquisition Policies Act*** and applicable FHWA regulations.

A12.12 On projects with federal participation in right of way, the use of functional replacement requires the following reviews and approvals:

- (A) Prior to entering into the functional replacement agreement, the proposed agreement with applicable supporting documentation, which has been reviewed by the Department to ensure no betterment is included, must be submitted to the Right of Way Officer, for submission to FHWA. This review shall be solely for the purpose of ensuring that betterments are not included in the proposed facility. The following must be included in the package as applicable:
 - (1) The proposed agreement;
 - (2) Typical construction plans and specifications for the facility;
 - (3) Any documentation necessary to support the estimated costs of replacement as reflected in the agreement.
- (B) After the functional replacement agreement is properly approved and executed by all parties and prior to commencement of construction of the replacement facility, the construction plans, estimates and any modifications thereto must be submitted to the Right of Way Manager, for submission to FHWA. for approval, if required. The Highway Program Manager must have reviewed and approved all of this documentation prior to submission to the Right of Way Officer. This review and approval shall be solely for the purpose of ensuring that betterments do not exist. This review is not for the purpose of approving the quality or adequacy of the design or structural or material components. The review shall, among other

applicable items, compare the size of the building, including the height and square footage, and the size of the site of the existing facility with the same components of the replacement facility. Approval shall be based upon the comparability of the facilities.

- (C) This is a review of the agency's bidding and letting process only. Documentation of the owning agency's bidding and letting process must be submitted to the Right of Way Officer. The owning agency shall utilize its procedures in the bidding and letting of the construction contract. The owning agency may provide a summary, on its letterhead, of its process for review or it may submit copies of the applicable requirements. After review and approval by the district, this documentation must be transmitted to the Right of Way Officer, for submission to FHWA.

NOTE: In order to shorten the total time necessary for the functional replacement process, it is recommended that the documentation for the owning agency's bidding and letting process be submitted for review and approval as early as possible after the determination has been made to utilize functional replacement and prior to execution of the Functional Replacement Agreement.

A12.13 Prior to the Department's and, on projects with federal participation in right of way, FHWA's concurrence in the award for actual construction, an agreement shall be entered into by the Department and the owning agency setting forth the rights, obligations and duties of each party with regard to the facility being acquired, the acquisition of the replacement site, and the construction of the replacement facility. The executed agreement shall include, but not be limited to, the following:

- (A) An explanation of how the cost of the new facility will be shared between the parties;
- (B) The point at which the title to the parcel of the existing facility will transfer to the Department;
- (C) An explanation of how the functional replacement on a project will be funded and at what point the payment(s) will be made;
- (D) Estimated costs to replace the facility and site, if applicable;
- (E) A statement that the owning agency shall follow its bidding and construction processes if the procedures are acceptable to the Department and, on projects with federal participation in right of way, acceptable to FHWA; and
- (F) A statement of the Department's requirement for periodic inspections during the construction of the facility.

A12.14 The following Departmental approvals shall be required for Functional Replacement Agreements:

- (A) Reviewed by the Right of Way Officer and Highway Program Manager
- (B) Functional replacement agreements shall be approved by the Commissioner of Department of Public Works.

A12.15 The Highway Program Manager is responsible during construction of the replacement facility for periodic on-site inspections to note changes from the approved plans and to ensure that betterments that were not approved as items in the functional replacement agreement are not included.

A12.16 If, during construction, change orders are needed, the Highway Program Manager shall be responsible for review of the change(s) to ensure that betterments are not included. Additionally, on projects with federal participation in right of way, all change orders must be transmitted to the Right of Way Officer, for submission to FHWA for review.

A12.17 Prior to making the final payment to the owning agency, the Department shall obtain a statement signed by an appropriate official of the owning agency and the Right of Way Officer certifying that the cost of the replacement facility has actually been incurred in accordance with the provisions of the executed agreement. The statement must certify that a final inspection of the facility was made by a representative of the Department and a representative of the owning agency. The statement shall also certify that the Department is released from any further responsibility.