Agreement Procedures for Local Public Agency Projects

CAROL ERLER
Supervisor
Local Assistance Unit, Division of Land Acquisition, IDOHOH

We'll now address the additional requirements for projects utilizing federal-aid for right of way costs. The basic difference is that the consultant performing the services as well as the fees for all services must be authorized by FHWA prior to the costs being incurred.

We have made some significant changes in the past year in an effort to refine the procedure for consultant agreements and, we hope, shorten the length of time for receipt of FHWA authorization and subsequent notice to proceed with the required services.

Standard Agreements for R/W services by consultants have been approved by FHWA and have been in use for several months now. In addition, the two phase R/W agreement process was approved and we have now implemented this procedure. It's a little different from the agreements you may have used in the past so we have also been scheduling scope of the work meetings prior to the initiation of agreements for the right-of-way phase if federal aid will be participating in the cost. The Division of Local Assistance area engineer responsible for your area should be contacted to schedule the scope meeting. The consultant who will be performing the work should be in attendance as well as the LPA personnel who will be directly involved in the project.

The first part of all agreements for consultant services is the 18-page section which applies to all agreements. We refer to it as the "boiler plate." The IDOHOH and FHWA requirements for such things as non-collusion, MBE requirements, ownership of documents, etc. is covered in these pages. You see on the monitor the first page of this agreement which should be fully filled in to indicate the local agency involved, the consultant, identification of the project by number and location, and the specific service covered in the agreement.

These occasionally come in just as you see it here. Obviously, the information is necessary before we can consider the remainder of the agreement. The appendices for the appropriate services are attached to and become a part of these 18 pages. The appendices can be modified to fit the special circumstance germane to each project. Use of these agreements eliminates the need of submittal to FHWA for their approval prior to the execution of the agreements.
The proposed agreements must be submitted unexecuted to the Division of Local Assistance for proper reviews. Following these reviews they will be returned to the LPA with further instructions. After they are fully signed and resubmitted to the Division of Local Assistance, they will be forwarded to FHWA with an authorization request.

The two R/W phases are:
1. R/W Engineering
2. R/W Services

The project is ready for the R/W engineering phase after design approval has been given for the project. Approved consultant selection procedures must be followed for the R/W engineering phase but are not required for R/W services.

The services covered in this phase are:
1. Preparation of final right-of-way plans.
2. Title search and guaranty of title.
   A 20-year title search is required with a $5,000 guaranty of title. Each title search must be updated at the time each parcel is acquired.
3. Metes and bounds descriptions
4. Individual plat of each parcel
5. R/W stake-out
6. Transfer documents may be part of this agreement or may be deleted and furnished by the Local Agency as they prefer.
7. Appraisal Problem and Fee Estimate. This is a change from prior agreements. This is an analysis of the potential appraisal problem and estimated appraisal fee that will be entailed in each property acquisition. The report should be accomplished by a qualified appraiser after the R/W engineering has been submitted to IDOH for approval and the stake-out completed.

The R/W engineering is quoted on a cost per unit with an estimate of the number of parcels. Provision is made for an additional 10% over this total to provide for a variation in the number of parcels or units. The not to "exceed amount" of the agreement is the estimated amount plus this 10%. By the same token, if the number of units is less than estimated, payment will be accordingly. If the scope of the work for some reason exceeds the "not to exceed" figure, a supplemental agreement must be initiated. Keep in mind any work performed prior to FHWA authorization may not be reimbursable to the LPA so it could be costly to the Local Agency if not properly handled.

Phase II is referred to as right-of-way services. These services can be any one or all of the following:
1. Right-of-way Management and Supervision
2. Appraising
3. Review Appraising
4. Buying
5. Property Management
6. Relocation Assistance

When you are ready to begin this phase, a scope of the work meeting should be scheduled with your area engineer. This may seem unnecessary in some cases but we believe it will save valuable time and speed up the agreement process considerably.

This agreement is arranged so that the consultant can indicate which of these services will be provided and the appendices can be modified accordingly. Each service is figured on a lump sum per parcel with the exception of R/W Management and Supervision, Property Management, and Relocation Services which may be on a lump sum fee or cost-plus basis as desired for the specific project.

The individual who will be performing each service must be indicated on the agreement or supplied by separate document. We maintain a list of consultants, appraisers, and buyers who have been qualified and approved to perform the respective services. These lists are available upon request from our office. Additional people may be approved, however, by submitting a request for approval of a specific individual along with a resume of his/her qualifications and achievements. The Federal Highway Program Manual does require, however, that individuals providing relocation assistance be approved for each project.

Separate agreements are available for each of these R/W services to allow the Local Agency to hire each service rather than using one consultant who will do it all. Keep in mind that each agreement must be prefaced by the boiler plate mentioned previously.

We also have standard agreements for legal services and supplemental agreements. They are all available from the Division of Local Assistance as needed. Also, your area engineer or I will be glad to answer any of your inquiries.

If you don’t remember anything else I’ve said, please remember this “Thou Shalt Not Incur Any Right-of-Way Costs Prior to FHWA Authorization.”