

Chapter 9: Construction or Renovation of Facilities

Background

The construction or renovation of project facilities for Section 5311 subrecipients may be necessary to provide for an efficient and coordinated rural public transportation system. The costs of construction or rehabilitation of transit facilities, including design, engineering, and land acquisition, are eligible capital expenses. The responsibility for construction management and oversight lies with the Subrecipient.

Real property must be acquired, managed, used and disposed of in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) (PL 91–646) and 49 CFR Part 24, the implementing regulation.

Additional guidance is found in FTA Circular 5010.1ED (as amended).

The objective of the Uniform Act is to ensure equitable treatment of property owners of real property to be acquired for Federal and federally-assisted projects; that people displaced by a federally-supported project be treated fairly, consistently, and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective. The regulations implementing the Uniform Act are very specific in naming the means to achieve those legislated objectives. Objectives of FTA Circular 4703.1, Environmental Justice Policy Guidance for Federal Transit Administration Recipients will be considered when administering the requirements of NEPA, Title VI and related statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Congressionally-authorized planning requirements, and other laws, regulations, and Executive Orders that address or affect infrastructure planning and decision-making, social economic or environmental matters, public health or public engagement.

To ensure eligibility for Federal funding, the subrecipient should follow the typical process sequence when acquiring real property for a project:

Title VI Equity Analysis → National Environmental Policy Act (NEPA) Approval → Title Search → Appraisal → Appraisal Review → Just Compensation Determination → KYTC/OTD Concurrence → Offer to Owner → Settlement

Pre-Award Review

The following guidelines have been developed for transportation providers based on the procedures set forth by the State Management Plan issued by the KYTC/OTD. If federal or state funds are used, applicable federal and state guidelines and requirements must be followed in accordance with FTA Circulars 4220.1F and 5010.1C and any revisions there to. In addition, all **construction related activities shall require pre-award review and approval by the KYTC/OTD.**

Planning

Planning activities in advance of the construction or renovation of rural public transportation facilities are an eligible Section 5311 expense. These may include, but are not limited to, feasibility studies, alternative site analyses, environmental assessments, environmental impact statements, or other studies necessary as a prerequisite to undertaking the project. **A Title VI Environmental Justice analysis should be conducted during the planning stage.**

Planning activities may be funded from Section 5311 administrative funds

Land Acquisition

Overview

Real property acquisition and relocation activity must be conducted in accordance with the requirements in the *Uniform Relocation Assistance and Real Property Uniform Relocation Act of 1970, as amended (Uniform Act)*, and codified in *49 CFR, Part 24*. FTA guidance states,

“The objective of the Uniform Act is that owners of real property to be acquired for Federal and Federally assisted projects be treated fairly and consistently; that persons displaced be treated fairly, consistently and equitably; and that acquiring agencies implement the regulations in a manner that is efficient and cost effective.” Subrecipients may not incur costs prior to receiving approval from KYTC/OTD.

Any Section 5311 construction or renovation activity which involves the acquisition of land or the displacement of any persons, firms or businesses shall be subject to the provisions of the 49 CFR part 24 and the regulations of FTA Circular 5010.1C, "Grant Management Guidelines." or **Environmental Justice Circular.**

Real property is acquired at its current fair market value, established on the basis of independently prepared appraisals.

In addition, and associated with the acquisition of real property, the state requires the preparation of an environmental assessment (to at least Level I) completed by a professional environmental firm.

Incidental uses of real property which may raise additional revenues for the transit system or, at a reasonable marginal cost, enhance system ridership, are subject to the regulations contained in FTA Circular 5010.1C.

Responsibilities

Subrecipient:

- Obtains appraisals and prepares initial environmental and other required documents **including Title VI Equity Analysis prior or with the application submission.**

KYTC/OTD

- Reviews submittals for accuracy and conformance to policy and KYTC/OTD must signoff on just compensation.
- Provides policy direction and guidance.

Appraisal

1. Appraisers must be certified or licensed with a State Appraisal Board as required by the URA regulations at Section 24.103(d) (2).
2. Real property must be acquired at its current fair market value. Fair market value will be established based on a recent, independently prepared appraisal by a certified appraiser,

3. An additional appraisal may be made if the grantee finds the valuation problem complex and deems a second appraisal to be appropriate.
4. Subrecipients shall instruct appraisers to disregard any decrease or increase in the fair market value of the real property caused by the likelihood that the particular property is to be acquired for the project.
5. An appraisal and a reviewer's analysis will be required.
6. Instead of using its power of eminent domain, when a property cannot be purchased at appraised value, a subrecipient may propose acquisition through negotiated settlement.
7. The subrecipient must document that reasonable efforts to purchase it at the appraised amount have failed and prepare written justification supporting why the settlement is reasonably prudent and in the interest of the public.
8. When the settlement exceeds the offer by \$10,000, a litigation attorney must provide a written assessment of proposed settlement risks over the risks of proceeding in court. Prior FTA concurrence is required when a settlement of \$50,000 or more and must be further negotiated. FTA has identified exceptions to obtaining a full appraisal.
9. Full appraisal or negotiation procedures are not necessary in certain instances. The KYTC/OTD should be contacted for further guidance when any of the following conditions apply:
 - The owner is donating the property.
 - The subrecipient does not have authority to acquire property by eminent domain.
 - The property qualifies as a voluntary acquisition as defined in 49 CFR 24.101(a).
 - The valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on available data.
10. Unless one or more of the exceptions above applies, the project application that includes real property acquisition is considered incomplete without an appraisal.
11. An estimated property value of \$500,000 or greater will require FTA approval of the Appraisal and Review Appraisal.

Negotiation

Federal land acquisition regulations require that appraisals, including an "offer of just compensation" (with supporting documentation) be prepared before entering into negotiations or executing a purchase agreement for the land.

A subrecipient may **initiate** the negotiation process prior to grant approval and subrecipient shall secure prior approval from KYTC/OTD before an offer is made. However, no reimbursement will be made for costs incurred prior to execution of the standard agreement.

It is therefore important for subrecipients await notification that the standard agreement is fully executed before entering into the purchase agreement. The purchase agreement is normally executed at or prior to the opening of escrow.

Payments are made on a reimbursement basis upon presentation of proper invoices and supporting documentation. Grant funds will not be available for deposit in escrow. Subrecipients should therefore be prepared to finance land acquisitions initially with local funds.

Architectural and Engineering Services

A project will retain architectural and engineering (A/E) consulting services in accordance with competitive proposal procedures for qualifications-based procurement as outlined in FTA Circular 4220.1F **and in accordance with KRS 45A**. This type of procurement will also be used for architectural and engineering related services such as program management, construction management, feasibility studies, preliminary engineering, design, surveying, mapping, or related services. Following this method, competitors' qualifications are evaluated and the most qualified competitor will be selected subject to negotiation of fair and reasonable compensation.

The scope of work in the project's Request-for-Proposal (RFP) will incorporate planning procedures for design and construction of capital improvement projects.

KYTC/OTD will approve the negotiated contract between the project and the architectural/engineering consultant.

The selected architectural/engineering consultant will not commence work on the project until receipt of the executed design agreement.

Facility Design

The A/E firm will be responsible for filing all applicable permits, plans, specifications, and other documents with any local, state or federal agency having jurisdiction over any part of the project.

KYTC/OTD will coordinate the design review among the state agencies that may have review responsibility over the project. The A/E consultant will be responsible for submitting the specified number of copies of design documents to accomplish this review.

The actual amount of Section 5311 funds obligated will be based on the programmed amount and the cost estimate prepared by the project's A/E consultant and is dependent upon the availability of federal funds.

The A/E consultant will be responsible for establishing the date for receipt of bids in consultation with the project and KYTC/OTD. ~~A period of four (4) to six (6) weeks will normally~~ Adequate notice will be required between publication of the advertisement for bids and their receipt.

The project will submit to KYTC/OTD a certified tabulation of the bids received along with the project's approval process and recommendation for bid award.

Office of Transportation Delivery will approve the award of construction contracts prior to execution of agreements between the project and the successful bidders.

Facility Construction

The project, through its A/E consultant, will be responsible for all inspection and construction administration activities during facility construction.

The project will forward two (2) copies of the final construction report to KYTC/OTD. KYTC staff may conduct separate inspections and attend any of the construction/contractor meetings during the construction process.

Property Management

Facilities constructed or renovated with federal funds will be the property of the project as long as the facility is used for public transportation purposes.

If for any reason the facility is no longer needed for the purposes of public transportation services in non-urbanized areas, the provisions of FTA Circular 5010.1C (as amended) regarding property disposition will be followed.

All subrecipients shall have an effective facilities and equipment maintenance plan that insures that federal and state investment in facilities and equipment is protected adequately. The maintenance plan should be written and include an organization and assignment of responsibility for facility and equipment maintenance, a series of inspections and routine maintenance actions designed to ensure the proper care and maximum useful service life of facilities and equipment, and a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment. KYTC/OTD will ensure compliance through periodic on-site inspection.

Maintenance Requirements

Properties purchased or constructed with federal or state funds such as land, buildings (i.e. bus barns), and facilities (i.e. passenger shelters and transfer stations) should be maintained free of defects and graffiti to ensure the area is in usable condition and a safe environment. The properties must be used for the purposes described in the application and agreement.

All subrecipients are required to have maintenance plans for buildings and facilities and submit them to OTD.

Restrictive Covenants/Deed of Restrictions

KYTC/OTD requires that land and permanent buildings purchased or improved with federal or state funds have a restrictive covenant filed with the property deed. The covenant is to protect the federal interest in the property. Because passenger shelters are not permanent buildings, they are exempt from this requirement.

Disposition of Property

Land, buildings or facilities purchased or improved using federal or state funds may only be used for the originally authorized purpose. Such property shall not be transferred to another party, disposed of, ~~its title encumbered~~ or have other liens or claims imposed, without obtaining the approval of KYTC/OTD pursuant to the procedure below.

When property funded with federal or state funds is no longer needed for the originally authorized purpose, the subrecipient is required to contact the OTD for disposition instructions.

The options are as follows:

- Retain title of the property after compensating the awarding agency (KYTC/OTD);
- Sell the property and compensate the awarding agency (KYTC/OTD); or
- Transfer title to the awarding agency (KYTC/OTD) or to a third-party designated or approved by the awarding agency.

The fair market value of the property shall be used when property is sold, transferred to another party, or voluntarily converted to a non-transit use by the transit agency. Subrecipients must have a commercial appraisal or other fair market valuation to determine fair market value. KYTC/OTD must review and approve the fair market valuation if a commercial appraisal is not used.

When compensating KYTC/OTD under the procedures identified above, KYTC/OTD receives an amount equal to the fair market value times the percent of federal or state reimbursement as identified in the original subrecipient agreement. The subrecipient retains an amount equal to the fair market value times the percent of match provided as identified in the original subrecipient agreement.

The disposition of property that is involuntarily converted (i.e. acts of God, other) will be negotiated on a case-by-case basis between KYTC/OTD and the subrecipient.

Subrecipients must reinvest any funds received from the sale of property or insurance proceeds into the transit program. Funds received by KYTC/OTD shall be reinvested into the originating grant.

Subrecipient responsibilities:

- Contact OTD for technical assistance regarding any applications for federal or state funding for land acquisition or development of permanent structures.
- Obtaining restrictive covenants/deed of restrictions on land or permanent buildings
- Submit maintenance plans for land, buildings and facilities to OTD.
- Keeping an inventory of land, buildings or facilities purchased with federal funds and submitting to OTD through the Property Inventory forms.
- Name KYTC/OTD as additional insured for premise insurance.
- Contact OTD for assistance regarding disposal of land, buildings or facilities acquired with federal or state funds.
- When disposing of property, obtain a commercial appraisal or other fair market valuation, and submit the documentation to KYTC/OTD for approval.
- Compensate KYTC/OTD as described above if disposing of property.
- Reinvest any proceeds from the sale of property into the transit program.
- **Request approval for any incidental use from KYTC/OTD.**

Labor Protections

Davis-Bacon Act

For FTA programs, 49 U.S.C. 5333(a) applies Davis-Bacon Act prevailing wage requirements. The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949

in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) of the Act requires the Secretary to take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors in

the performance of construction work financed with the assistance of loans or grants under this Act be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining “adequate assurance” that required labor standards would be maintained upon the construction work.

Subrecipients are required to have current labor certifications and assurances from the Federal Transit Administration. These assurances should be reviewed and incorporated into subrecipient proposals and awards made for real property construction and/or renovation.

