



CHAPTER NINE

CONTRACTING  
RIGHT OF WAY SERVICES

MAINE RIGHT-OF-WAY MANUAL

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# CHAPTER NINE

## CONTRACTING RIGHT OF WAY SERVICES

### 9-1 CONTRACTING RIGHT OF WAY SERVICES — GENERAL

#### 9-1.01 Role of Contracted Services in Right of Way

MaineDOT maintains a fully qualified and broadly experienced professional right of way staff consisting of personnel who deliver right of way for scheduled construction projects, and administer the Right of Way functions within the MaineDOT Programs. The MaineDOT Right of Way staff is sized and positioned to accommodate normal project workload demands and acquisition complexity. Right of way services are contracted to private service providers to augment staff resources under the following circumstances:

1. Meet peak project workload requirements that cannot be met by MaineDOT staff.
2. Provide specialized expertise to address unique property acquisition situations.
3. Provide services on short notice to unexpected program needs.
4. Provide timely service in areas of the State that cannot be efficiently served by staff.
5. Meet temporary, urgent or occasional need that cannot be accommodated by MaineDOT staff.

#### 9-1.02 Purpose of the Contracting Procedure

The purpose of the right of way contracting procedure is to set forth a consistent, equitable and effective process to assess contracting needs, evaluate qualifications, contract for services and provide guidance and oversight of Consultants.

#### 9-1.03 Legal Authority

This policy conforms to the following legal authorities:

1. 5 **MRSA**, Section 1816-A – Personal Service Contracting;
2. 5 **MRSA**, Section 1825-B – Bids, Awards and Contracts;
3. 2 **CFR** Part 200
4. 23 **CFR** Part 200 – Title VI Civil Rights Requirements.
5. 23 **CFR** Part 710 Right of Way and Environment.
6. 49 **CFR** Part 24 Uniform Act

**9-1.04 Scope of Right of Way Contract Services**

Right of way services will normally be contracted on a project basis using On Call Agreements. However, specialized services may be required on an intermittent “stand-alone” basis as situations are identified that require these services.

The following right of way functions may be contracted by MaineDOT:

1. Preliminary ownership information;
2. Title investigation;
3. Preliminary mapping;
4. Project data collection;
5. Right of way cost estimates;
6. Final mapping;
7. Valuation services:
  - a. Appraisals
  - b. Appraisal Review
  - c. Supplemental Appraisal Services,
  - d. Dispute resolution counseling, and
  - e. Expert testimony;
8. Negotiation and acquisition services;
9. Property Surveys;
10. Property Management Services;
11. Property Listings;
12. Relocation field services; and
13. Relocation assistance casework services.

MaineDOT contracts regularly for appraisal services on a parcel or a project basis because this is a continuously recurring activity that is subject to wide workload fluctuations. The other functions will be contracted for on an as needed basis, depending on the availability of MaineDOT property staff to perform work.

While the above functions may be contracted, MaineDOT is responsible for and must perform the following:

- Determination of just compensation;
- Right of Way certifications;
- Determination of payees (title verification) for property and relocation payments;
- Approval of administrative and legal settlements;

- Approval of relocation payments;
- Referrals and other functions associated with the processing of unsettled parcels through the State Claims process.

#### **9-1.05 Civil Rights Assurance**

MaineDOT will ensure compliance with Title VI of the ***Civil Rights Act of 1964***. This requires that no person shall, on the grounds of race, color or national origin, be excluded from participation in, or denied the benefits of, or otherwise be subjected to discrimination under any program or activity for which the recipient receives Federal assistance from the United States Department of Transportation.

MaineDOT ensures Title VI compliance in securing right of way services by advertising for contract services on the MaineDOT Contract Procurement Office's (CPO) webpage at **<http://www.maine.gov/mdot/cpo/>**. MaineDOT affirms that it does not discriminate in the right of way contract selection process or in the evaluation of contractor performance.

## **9-2 MAINEDOTCONTRACTING PROVISIONS**

### **9-2.01 Contract Procurement and Administration**

The MaineDOT Contract Procurement Office (CPO) is charged with creating and overseeing non-construction contracting procedures ensuring that State and Federal regulations are met.

CPO employs Contract Specialists (CSs) who provide contracting guidance to the Offices and Programs they serve. Individuals within the Property Office in need of external services are to use their respective CS to ensure that all contract procurement and administration practices are in accordance with the most recent version of MaineDOT's *MaineDOT Consultant and Professional Services Manual*. This also applies to the right-of way personnel who are assigned to specific programs.

The appropriate CS will assist the sponsoring contract administrator in selecting the correct firm using the appropriate procurement method, contract type, and payment method.

### 9-3 CONTRACTING RIGHT OF WAY FUNCTIONS

Traditionally, MaineDOT has contracted primarily for appraisal services as MaineDOT staff performed other right of way functions. Over the last several years, MaineDOT has begun to contract for acquisition, relocation and property management services and anticipates contracting for a broader range of right of way services that will include the functions listed as 1 thru 10 in Section 9-1.04. Contracted services will be in conformance with this manual, State law and applicable federal regulations. Federal projects are governed by 49 CFR Part 24 and 23 CFR Part 710 & 172.

#### 9-3.01 Qualifications

Thorough and relevant qualifications criteria are necessary to fairly assess contract providers of right of way services. MaineDOT conducts a Statewide Request for Qualifications (RFQ) every 4.5 years in order to develop a list of qualified firms, though the opportunity to be prequalified for these services remains open between the formal RFQs. This list is established to handle MaineDOT's normal anticipated workload that may be assigned to private sector firms. MaineDOT also has the ability to issue a project or task specific Request for Proposals (RFP) when it sees fit to do so.

Any Right of Way related General Consultant Agreements (GCAs) will be managed and administered by CPO. Program Senior Property Officers needing right of way services will utilize their CS to execute contracts under these GCA's.

The following are examples of the relevant information needed by MaineDOT in order to make a fair assessment of a Consultant's qualifications:

1. Experience. Consultants will only provide information on projects that included similar work performed by the staff who will be assigned to the MaineDOT projects.
2. Staff. Provide information regarding how they assign work within their organization. Resume's must be provided for the staff who will be assigned work on the MaineDOT project. f
3. Workload. Consultant must provide information on the current and anticipated workload for the staff and office who will be performing the MaineDOT work.
4. Project Right of Way Coordinator. Identify who within the Consultant's organization will be personally responsible or "in charge" of right of way and relocation components included in the scope of work. The Consultant must describe that person's qualifications, provide a resume that includes information regarding their experience on similar projects, and discuss his or her current and anticipated workloads.
5. Organization Chart. Consultant must provide an organizational chart showing the entire team.

6. Project Coordination. Consultant must describe how they will conduct project coordination with MaineDOT.
7. Services. Consultant will identify those services they have an interest in providing (see Section 9-1.04).

The qualification packets submitted should conform to characteristics of the functions to be performed.

### **9-3.02 Qualifications for Appraisers – Appraisal Register**

The qualifications for Appraisers who provide valuation services that are contracted on a parcel or project basis are discussed in Chapter 4. This includes a description of the Appraisal Register, which is the list of Consultant appraisers who are pre-qualified to work for MaineDOT. The process discussed in Chapter 4 will continue. Appraisers on the Appraisal Register will be advised if there is a need to update or augment their qualifications to meet the criteria discussed in this Chapter. The qualifications required for Review Appraisers can also be found in Chapter 4.

### **9-3.03 Right of Way Functions – Scope of Services**

The qualification packets submitted by the firms will address identify the services they wish to provide and their qualifications to do so.. The following sections discuss the scope of services for right of way functions.

#### **9-3.03(a) Preliminary and Final Mapping**

The firms providing preliminary mapping services are required to provide the following:

1. Owner Data. The firm must gather the names and addresses of abutting property owners within the project limits. This data should be provided very early in the process to MaineDOT prior to beginning the field survey. Provide the listing in a database format as a .dbf file and include the following data fields for each parcel:
  - a. Owner's name(s),
  - b. Mailing address,
  - c. Tax map and lot number, and
  - d. Book and page reference for deed.
2. Maps. Include copies of full size tax map(s) encompassing the project area.

3. References. Include the reference materials used to develop the preliminary right of way plans (e.g., deeds, survey plans, town records).
4. Preliminary Plans. Prepare preliminary right of way plans in either a compatible computer format that is consistent with MaineDOT specifications or in a hard copy plot. For either format, the plans should include:
  - a. Include property lines plotted from deed, property owner information and existing plans correlated to the property markers as located in the field. This is intended to be an office plotting task to indicate property ownership limits and ownership and is not intended to involve property surveying of the parcels themselves. MaineDOT's concern and the consultant's focus should be on the location of the parcel frontage and sideline boundaries. The back line of lots should be shown where practical based on the size of the lot and availability of room on the plan sheet itself. These plans are not intended to be property surveys and will not require a Land Surveyor's stamp. Property lines reproduced directly from tax maps will not be accepted.
  - b. Include all existing easements and/or other property rights – located and identified.
  - c. Label each parcel depicted with property ownership information, including owner's name(s), parcel number and parcel total area.
  - d. Plat all parcel/property features (e.g., wells, septic systems, water lines, underground utilities).
  - e. For the existing centerline alignment, tie into any existing centerline alignments from previous projects, if there are any in the area. This information is available from the MaineDOT Mapping and Research Section.
  - f. Note any references used (e.g., private surveys, DOT file number of plans, county layout).
  - g. Identify the firm's name on every sheet with the following or similar note "Existing right of way and apparent property lines determined and plotted by \_\_\_\_\_."

The firms providing final mapping services are required to provide the following:

- a. Construction limits and items;
- b. New right of way limits, including slope, clearing and wrought portion limits;
- c. Permanent and temporary rights;

- d. Updated parcel setups;
- e. Acquisition stations and offsets;
- f. Condemnation distances, including base line and boundary lines;
- g. Easement limits and property lines tied into the base line;
- h. Calculated areas of acquisition or take for each type of acquisition (fee, easement, etc.);
- i. Inside distance calculations;
- j. Notes for special items like reserved areas and truck lanes;
- k. Total areas of property ownership calculated from the best available property information;
- l. Plan title block, including the MaineDOT file number; and
- m. Right of way plan disclaimer.

The Surveyor/Mapper does a final check on all calculations and other plan data. Then the Surveyor/Mapper reviews the final plans with the Title Office Condemnation Unit to insure quality and conformity with MaineDOT standards, as discussed in Chapter 2, Section 2-6.06(f). Once the review is complete, the Surveyor/Mapper distributes hard copies of the final right of way and design plans to the Senior Property Officer, Utilities, and Environmental Members; the Project Manager; and the Title Office. The Surveyor/Mapper also sends to the Project Team Right of Way Operations Member additional project materials, including title cover sheets, PORs and an updated N&A List.

*Note: The plotting of the property lines will be the sole responsibility of the consultant. The consultant agrees to perform all work arising out of this agreement in a reasonable and prudent manner and according to industry principles and practices. The consultant agrees to perform additional work as may be necessary to correct any negligence, errors or omissions in all work required under this agreement without undue delay and without additional cost to MaineDOT. See Chapter 2 for additional detail.*

**9-3.03(b) Title Investigation**

Title searches are prepared to satisfy the legal requirements as mandated in 23 MRSA and to support acquisition tasks. Title searches are generally ordered after the Project Team establishes a conceptual project scope that includes the anticipated right of way acquisition needs. The following are the levels of searches that are requested by the surveyor/mapper of a project team based on the impacts to the property.

1. Preliminary Investigations. This level of title investigation is primarily in support of the preliminary mapping effort as described in Section 9-3.03(a). The principal deliverable work product is a compilation of copies of the current deed descriptions for all properties abutting the proposed project. MaineDOT may request these copies be supplied to those individuals who are preparing the preliminary right of way maps at an early stage in the project development process to aid in the initial placement of property line data on the maps.
2. Deed Only Searches. This type of search is requested when MaineDOT anticipates that it will only need temporary property rights. A deed only search is a simple compilation of the current deed, a Grantor schedule only of the current owner from their acquisition forward and an abbreviated cover sheet.
3. Acquisition to Date Titles. All properties that will have permanent rights acquired as part of the project will have an acquisition to date title inspection prepared. The acquisition to date title includes:
  - a. A copy of the deed into the current owner;
  - b. A drawing or sketch of the property description as given in the deed;
  - c. A summary title which includes:
    - 1) A complete schedule of all index entries for the current owner from the deed up to the date that the title investigations are begun (All titles for the project should be scheduled through the same date.);
    - 2) An abstract of all instruments in the chain of title from the current owner forward (The instruments should be copied, not abstracted, when there is a change of description or other pertinent new material is given.);
    - 3) A summary chain of title showing all instruments of record resulting from the schedule of index entries and;
    - 4) A cover sheet showing the owner of record and other information as indicated on the form;
  - d. A project inventory listing all owners of record by parcel number; and

- e. A listing of any problems that need to be resolved by parcel number together with a report on any measures to cure or additional information gathered by the abstractor.

Finally, the abstractor must be prepared to do any additional preliminary title work that is required for the mapper to complete plotting the property lines.

4. Full 40-Year Titles. Following establishment of the final project scope, but before development of final right of way plans, the Title Reports for all proposed fee acquisitions and acquisitions involving significant areas of previously claimed prescriptive easement right of way (AKA “wrought portion”) will be upgraded to full 40-year Title Reports in compliance with Maine Bar Association standards. The findings of these Title Reports will be incorporated in the final right of way maps as the basis for the final phases of property valuation and acquisition activities.

At the completion of valuation and negotiation activities, but before actual acquisition, either by document or by eminent domain, all project titles will be updated and a memo will be submitted noting any ownership or mapping changes.

Three weeks prior to any scheduled acquisition, the Title Office will request checks according to the Report at the approved compensation levels, prepare appropriate acquisition documents (either a deed or a notice of taking), arrange for filing of the necessary record documents, and distribute the payments and required landowner notices.

### **9-3.03(c) Project Data Book**

The Project Data Book is a cumulative collection of factual data that are gathered in support of the preparation of project right of way cost estimates, Administrative Acquisition Worksheets and appraisals for a project. The Project Data Book consolidates general data for a related group of individual parcel reports in order to prevent duplicating items such as comparable data sheets, studies, and general conclusions that relate to the area or region (e.g., time, utility, and location), area and neighborhood descriptions, general exhibits, trend studies, etc. On large projects, the intent of the Project Data Book is to promote project consistency and efficiency. The Project Data Book is limited to factual data. Analysis should be included in individual Parcel Reports. It is intended to become an integral part of each Parcel Report by reference.

The Project Data Book content is intended to reflect the scope and complexity of the project it represents. The following summary of procedures and content is intended to outline the required level of effort for a complex project of significant scope. The content of the data package for non-complex projects may be modified appropriately to suit the intended need for these data in relation to the actual project under development. The scope and content of the

Project Data Book are to be mutually agreed on by the consultant and the Contract Administrator as a part of the scope of work for any specific project agreement.

Data collection must continue through submission of the last appraisal on the project. If the data, market, trends or references change during an appraisal project, appropriate additions to and modification of the completed Project Data Book must be made (e.g., Page 12- Revised June 13, 2000).

See Chapter 4 for additional details regarding required elements in the Project Data Book..

### **9-3.03(d) Valuation and Appraisal Services**

When obtaining valuation and appraisal services, the following will apply:

1. Short Format Appraisal Preparation. The Short Format Appraisal involves the preparation of formal documented Appraisal Reports in compliance with MaineDOT's Short-Form Appraisal specifications. This form of appraisal is used in connection with uncomplicated acquisitions where adequate market data are available and there are no issues of special benefits or severance damages.
2. Before and After Appraisal Preparation. This involves the preparation of detailed Appraisal Reports of the before and after format in compliance with MaineDOT's Appraisal Specifications.
3. Supplemental Appraisal Services. Supplemental appraisal services involve providing supplemental appraisal services in conformity with the above noted appraisal activities. These services may be required due to changes in project scope, change in ownership, discovery of unanticipated property impacts, and updating Appraisal Reports on unsettled acquisitions following eminent domain takings.
4. Dispute Resolution Counseling. These services involve working with MaineDOT's Legal Services Division and others in preparation for State Claims Commission hearings or Superior Court proceedings.

Representative tasks may include participating in pre-hearing/trial conferences, preparing supplemental documentation to appraisal products, assisting in planning for the presentation of testimony and advising MaineDOT personnel on the valuation-related impacts of proposed settlement negotiations.

5. Expert Testimony. This involves representing MaineDOT as an expert witness on matters of real property valuation in adjudicative proceedings.

See Chapter 4 for additional details.

**9-3.03(e) Appraisal Review**

The qualifications and procedures for fee review appraisers is the same as staff review appraisers. These details and some information regarding contracted fee review is located in Chapter 4 of this manual.

**9-3.03(f) Negotiation and Acquisition****MaineDOT Responsibilities**

MaineDOT will provide the Consultant with the following:

1. A copy of the project Estimate Sheet (Form VL-18) which summarizes the listing of recommended compensation levels, property owners and property rights required for the project;
2. Verification that necessary environmental and regulatory approvals are in place and that funding is available to support the acquisition(s);
3. A current set of design plans and cross sections, right of way plans and aerial photos, if available;
4. Copies of the project appraisals and valuation documents; including just compensation determinations;
5. Owner Contact Report (Form AQ-14);
6. A Negotiator's Certificate, and Negotiator's Statement (Forms AQ-5 and AQ-6);
7. Copies of applicable MaineDOT approved forms:
  - a. Land owner offer letters, (Forms AQ-1 and AQ-2),
  - b. Land owner assent form (Form AQ-15),
  - c. Work permits (Form AQ-4),
  - d. Administrative Offer Settlement Agreement (Form AQ-8), and
  - e. Other documents as may be appropriate to the proposed acquisition(s).
8. Copies of the acquisition brochure, "A Landowners Guide to the Property Acquisition Process"; and
9. Limited authorization to negotiate administrative settlements.

**Consultant Responsibilities**

The Consultant will be responsible for:

1. Field Negotiations. The objective of the field negotiations phase is to personally meet with the owners, and establish a trusting professional relationship. The Consultant is responsible for insuring the owner is fully informed and understands:
  - a. The purpose and need for the project;
  - b. A general description of the overall project plans relating to typical sections drainage, traffic patterns, and schedule;
  - c. The impact of the project on each property (e.g., takings, horizontal and vertical alignment changes, drainage, drive grade changes);
  - d. The basis for the State's offer and the owner's rights and recourse if the offer is unacceptable;
  - e. The schedule for acquisition, method of title transfer, who will be named as payees on the check, and the owners rights to cash the check without relinquishing appeal rights; and
  - f. The name, address and telephone of MaineDOT's project representative, should issues arise during the construction phase of the project.

The Consultant will meet these objectives in performing the following activities:

- a. Prepare the necessary paperwork before owner contacts.
- b. Highlight and annotating the plans to facilitate owner interpretation.
- c. Become familiar with valuation and appraisal materials; and just compensation determinations.
- d. Make appointments for property owner contacts.
- e. Initiate mail and telephone contacts with non-resident property owners.
- f. Conduct personal contact and negotiations with affected property owners.
- g. Maintain an up to date electronic summary log of all property owner contacts (Form AQ-14). This log should be available immediately upon request to the project Right of Way Manager. This will include:
  - 1) A listing of the items discussed with the owner (e.g., takings, grade changes, trees to be removed).

- 2) Issues or concerns of the owner and any commitments made by the Consultant to the owner.
  - 3) Detail sufficient to address issues that may arise as the project evolves.
  - h. Transmitting to MaineDOT all landowner construction accommodation requests for consideration.
  - i. Conducting personal follow-up contacts in response to landowner concerns and/or requests.
  - j. To the extent that landowner agreement can be achieved, executing and witnessing appropriate settlement agreements, work permits, etc. Any administrative settlements above the approved offer require explanation and justification.
2. Acquisition Phase. At this phase of the acquisition process initial contacts have been completed, agreement reached where possible, and the process advances to the actual transfer of property rights. These rights will usually be transferred through the condemnation process using the power of eminent domain. The negotiator will have varied tasks at this point in the process. These include:
- a. The negotiator will complete and submit an updated status report; completed settlement agreements, contact reports, and project correspondence file, and submit them to MaineDOT no later than 3 weeks before the condemnation date. This will serve as the basis to request final title verification, preparation of condemnation documents, compensation checks and landowner notification packets.
  - b. Following the filing of the Notice of Layout and Taking and the associated mailings to affected property owners, there is usually a number of land owner communications which will require the negotiator to conduct additional contacts, for the purpose of clarifying process, providing additional project information, and, if possible, negotiating an amicable settlement. The Consultant is responsible for a follow-up contact to all owners, in person, by telephone or letter at the Consultant's discretion, within 14 days of the condemnation date.
  - c. At, or about the "Condemnation Date" the development of the project is handed-off to the Project Resident. The Consultant will prepare and submit a report detailing elements such as negotiated construction accommodations, trees promised to be saved, assumptions regarding non-interference with septic systems, and other details, which will need to be communicated to those responsible for the construction of the project. A minimum telephone conversation with the Project Resident is required with an on-site meeting recommended.

- d. By law, those acquisitions which are unsettled 60 days following the filing of the Condemnation Documents are referred to the State Claims Commission for the scheduling of a land damage hearing. During this 60-day period, it is expected that follow-up contacts will be made with the owner of each unsettled acquisition with the objective of resolving differences and gaining settlements.
- e. At, or slightly before the expiration of the 60-day referral period the Consultant is required to make a final contact with each owner for a project status update and provide the property owner with a name and number of MaineDOT's representative. The Consultant will submit to MaineDOT a final status report detailing the status and details of each acquisition.
- f. At the completion of the 60-day negotiations period, the consultant will turn over all files to MaineDOT.

See Chapter 5 for additional details.

### **9-3.03(g) Relocation Field Services**

From the earliest stages of the project development process, the relocation-related activities involve a varied group of tasks, examples of which include the following:

1. Perform all work in compliance with appropriate FHWA and MaineDOT guidelines.
2. Prepare appropriate Conceptual Stage Relocation Plans for Environmental Impact Statements or Environmental Assessments on larger projects, as necessary.
3. Inventory project corridors to assess potential project impacts that would require commercial sign relocations and residential and commercial dislocations.
4. Prepare detailed estimates of relocation costs and time requirements for the purpose of establishing project budgets and schedules.
5. Contact possible displacees prior to public hearings to avoid surprises and confusion at public hearings. Discuss the acquisition/relocation process and give them an overview of how the relocation assistance program works.
6. Coordinate with the Relocation Casework Provider in cases where it appears that there may be hardship issues involved, and assist the displacee(s) in requesting early acquisition procedures.
7. Attend public hearings to answer questions regarding relocation.
8. Coordinate with the valuation/acquisition functions to ascertain the probable magnitude of acquisition offers for the purpose of initiating a preliminary computation of eligibility for, and amount of, replacement housing allowances.

9. Work with local brokers, the Internet, newspapers and other sources to compile an inventory of available replacement housing, replacement rentals or business locations.
10. Develop documentation based on the most comparable available replacement properties in the computation of replacement housing allowances, replacement rental allowances, moving costs, reestablishment expenses or “in lieu of” payments.
11. Establish and maintain a file of all contacts and work products to document every phase of the development of the project. The contact reports must be kept electronically and available to the project Right of Way Manager immediately upon request.

### **9-3.03(h) Relocation Casework Services**

Relocation services involving direct assistance to individuals or businesses normally come to an active phase at, or shortly before, commencement of acquisition negotiations. The acquisition and relocation assistance activities may or may not be conducted by the same person. The tasks associated with providing assistance are extremely variable, and may include, but not be limited to, the following:

1. Perform all work in compliance with appropriate FHWA and MaineDOT guidelines.
2. Coordinate with management, design, mapping, appraisal and displacees(s) for early acquisitions.
3. Help displacees prepare hardship letters requesting early acquisition.
4. Have paperwork (background information and applications for payments) prepared and ready for signatures, if practical.
5. Prepare and send “Notice of Intent to Acquire” as necessary.
6. Compute, request and deliver replacement housing allowances, replacement rental allowances or business relocation payments to owner(s), or tenant(s).
7. Develop documentation (bids, schedules, negotiated) for, and compute payments for, moving costs, incidental (closing costs) payments, mortgage buy-down, reestablishment expenses and “in lieu of” payments.
8. Assist affected abutters in coordinating the removal and/or re-installation of commercial signs outside the limits of newly acquired right of way and obtain necessary documentation for, and coordinate the payments for, all eligible reimbursable costs.

9. Prepare necessary documentation and prepare required applications, etc. for owner/tenant signatures.
10. Work with low-income tenants to establish income levels and ability to pay for housing within Federal Regulation guidelines.
11. Monitor moves, set up and attend closings, and inspect replacement housing for DSS standards.
12. Maintain contact reports and files for each relocation case history.

See Chapter 6 for additional details.

## 9-4 RIGHT OF WAY UNDER DESIGN-BUILD CONTRACT

### 9-4.01 General

A Design-Build transportation project includes the design and construction phases in a single contract. It is the intent of this section to allow maximum flexibility in the contracting and performance of property related activities as provided in State and Federal laws and regulations for design-build contracts. Any property related Design-Build contracting processes or procedures available under State and Federal law, but not explicitly addressed in this Manual, may be approved by the Property Office Director.

Under the Design-Build federal regulations (710.313), the construction may be phased or segmented to allow right-of-way activities to be completed on individual properties or a group of properties, thereby allowing right of way certification by phase or segment instead of the entire project all at once.

The Right of Way acquisition associated with Design-Build projects can be accomplished under the following general scenarios:

- MaineDOT may acquire the right of way in advance of the Design-Build Request for Proposals;
- MaineDOT may acquire the right of way concurrently with the Design-Build contract with right of way availability dates or acquisition durations included in the contract.
- Responsibilities for certain property acquisition responsibilities may be split between the Design-Builder and MaineDOT. Under this method, the contract will include specific time durations for MaineDOT to complete acquisition tasks upon approval of deliverables from the Design-Builder. Example: The Design-Builder may be responsible for property owner reports, right of way plans and appraisals. Once these deliverables are approved by MaineDOT, MaineDOT would be responsible for activities for the negotiations, acquisitions and relocations within a MaineDOT determined duration of time specified in the contract.
- The Design-Builder may be responsible for any acquisition/relocation tasks allowable under State and Federal Law and associated regulations including but not limited to those functions listed in 9-1.04 items 1-10.

When right of way acquisition and relocation functions are included in a design-build contract, such a contract will normally have the right of way functions performed by qualified subcontractors reporting to the prime Design-Builder. This arrangement must incorporate a process that complies with Maine State law, this Manual, applicable Federal statutes, and implements the following regulations:

- The Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations found in 49 CFR, Part 24\*.

- 23 CFR Part 710 in general and 23 CFR 710.313 that contains specific requirements related to projects where the right of way acquisition is included in the design build contract\*.
- 23 CFR 635.309(p) requirements for construction authorization as well as 23 CFR 636 for design-build.

\* The CFR requirements authoritatively interpret and implement the Federal Uniform Relocation Act and have the “full force and effect of law.”

In all cases, MaineDOT will assign a qualified employee as the project Right of Way Manager to serve as the first point of contact for all right of way issues for the project.

The purpose of the special right of way provisions under design-build set forth below is to enable benefits of the design-build concept to be realized while assuring that property owners and occupants have quality services and the same benefits and protections as would be provided if the right of way were administered under the traditional contracting process.

#### **9-4.02 Design-Build Contract Provisions**

The following is a list of provisions normally included in the request for proposals and/or the contract when right of way is included under a design-build contract. At the discretion of the Property Office Director, the actual contract provisions can be modified to reflect the various right of way clearance methods described in 9-4.01. To the extent the provisions of this section do not address specific issues associated with law, regulation or process, the provisions may be supplemented at the discretion of the Director, in consultation with the R/W Manager.

1. The Design-Builder will be responsible for delivering right of way acquired and cleared in full compliance with the implementing regulations of 49 CFR Part 24, 23 CFR Part 710 Section 313, the MaineDOT Right of Way Manual, and in compliance with Maine State Law. With FHWA approval, the Property Office Director may approve exceptions to the Manual in advance but only if there is full compliance with Maine and Federal Law and regulations controlling acquisition and relocation.

Conflicts must be brought to the attention of the MaineDOT Right of Way Manager designated for the project if there are any conflicts noted by the Design Builder between written authorities such as what is stated in the request for proposal (RFP) and the MaineDOT Right of Way Manual or other implementing regulations.

2. All resource plans for property related services for a design build project must be submitted to MaineDOT Property Office for review and approval before they perform work on the project. The Property Office will determine if the firms or persons in the plan are qualified for the associated assignments. People and companies on MaineDOT's current pre-qualified consultant firms list are qualified generally, and may or may not be well suited for complex assignments. A firm from the approved list may request authorization to use additional agents who have not already been pre-qualified. Each agent not on the current list that the firm intends to use must meet the requirements established by MaineDOT for those services. Any persons or companies not pre-

qualified must meet MaineDOT prequalification requirements for those services and be on the contractor's approved resource plan before commencing work.

3. The Design-Builder will submit a right of way action schedule to the Project Manager and Right of Way Manager for review and approval before initiation of right of way acquisition. This will include:
  - A relocation plan describing how the Contractors will comply with the requirements of Chapter 6 of this Manual. The plan will also include time estimates for relocation based on individual displacee needs, housing availability, and regulatory notice to move requirements.
  - Identification of buildable segments of right of way that may proceed to construction when right of way acquisition and relocation are complete and independent of right of way status on other project segments.
  - A proposed time schedule that includes prioritization of activities and performance of acquisition and relocation.
  - A cost estimate for performance of each right of way phase or function for which the contractor will be responsible.
4. The MaineDOT Property Office will determine just compensation, relocation benefit amounts, and any proposed use of Last Resort Housing for displacees.
5. The Design-Builder will develop a right of way tracking system to provide ongoing project status of appraisal, acquisition, and relocation. This system will include an up to date electronic contact report which includes summaries of discussions and correspondence with individual property owners.
6. The Design-Builder will develop a quality control system to assess performance of services and payments to owners and occupants and monitor progress in relation to the project schedule.
7. Proposed settlements above the established just compensation amounts and relocation program appeals will be referred to the project Right of Way Manager for decision or resolution under normal MaineDOT protocol.
8. After owners have been afforded a reasonable period of time to consider offers and negotiate settlements, the parcels will be referred to the Right of Way Manager for condemnation through the Property Office based on criteria MaineDOT establishes for the project and the process described in Chapter 5 of this Manual.
9. The decision to advance a segment or phase to the construction stage shall not impair the safety of or in anyway be coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent segments of the project.

**9-4.03 Design-Build Right of Way Specifications**

The Design-Builder is expected to fully comply with all of the specific requirements related to right of way acquisition and certification as stated in the FHWA regulations Title 23 CFR Section 710.

**9-4.04 Certification of Right of Way**

In accordance with Title 23 CFR Section 710.313, a design-build project may be authorized for construction in phases or segments as right of way for an individual property or group of properties are available. A project phase will be authorized under the same conditions of right of way certification as are required for traditional contract projects as described in 1-2.02(b) of this Manual. MaineDOT must have legal possession of all property for the phase of construction and occupants must have vacated.

**9-4.05 Quality Control**

MaineDOT is ultimately responsible for compliance with applicable laws and regulations concerning right of way and for retaining the high level of public trust in the fairness and quality of the acquisition process. The following measures will be taken under MaineDOT's existing quality program to assure owners and occupants are provided the same services, benefits, and protections as they would under traditional contracting process:

1. The Property Office Director will review and approve the right of way acquisition procedures included in design-build Requests for Proposals and contracts. The Director will ensure a qualified Senior Property Office is designated as right of way liaison to provide timely advice and guidance to the design-build contractor and the right of way subcontractor on right of way law, regulations, and MaineDOT procedures.
2. The MaineDOT Project Quality Control Plan will include oversight reviews, monitoring, and follow up to assure compliance with law, procedures, and contract provisions concerning right of way.

See Chapter 10 of this Manual for more detailed information on MaineDOT's quality control procedures.