

JOINT HIGHWAY-URBAN REDEVELOPMENT PROJECTS

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Pennsylvania is moving ahead on an accelerated highway program which requires not only that the staff of the Department of Highways must be sharply increased, but also that other methods of acquiring property, having highways designed and constructed must be found. A look at our construction expenditures will clearly indicate this need. In the fiscal year 1955-56, prior to the Federal-aid Highway Act of 1956, construction expenditures came to 87.6 million dollars. Since the Federal-aid Highway Act of 1956, there has been a marked increase: 1963-64: 215 million dollars; 1964-65: 245 million dollars; 1965-66: 267 million dollars; and 1966-67: 290 million dollars (Estimated).

Our construction lettings in June, 1967, reached an all time national high of 109.4 million dollars. The previous high for lettings in one month was held by New York State with 105.4 million dollars in March, 1965. During 1967-68, we plan to let 420 million dollars in construction contracts. Our Public Information Office reports that, with 869 million dollars in projects now under contract and 2.5 million in design, Pennsylvania now leads the nation in this respect with New York State as the runner-up with 700 million dollars in projects under contract and 1.6 billion dollars of improvements in design.

One of the biggest problems in this growing construction program is to find qualified engineers, right of way personnel and attorneys to handle a program of such increasing magnitude. As far as engineers are concerned, we have a recruitment program set up that reaches into virtually every engineering school in the country. However, regardless of how qualified a new engineer may be from a scholastic standpoint, he still lacks highway construction experience and must go through an internship and training program which results in his not being of immediate value to the Department. The same is true of our Legal Bureau. In 1955, we had a staff of four full-time attorneys. As of the end of this fiscal year we had an authorized complement of forty-two attorneys, plus the services of approximately 180 fee attorneys in the field who handle the title searchings, closings,

viewer's hearings, etc. Yet we presently have vacancies we have not filled despite vigorous recruitment efforts.

What does all this have to do with "Joint Highway - Urban Redevelopment Projects"? It indicates that if you are going to keep up with an accelerated highway program with a shortage of sufficient qualified experienced personnel you must find other means to achieve the goal.

Several states have local municipalities act as their agents in acquiring property for State highway projects. In a few instances a contract has been entered into with a consultant to not only design projects, but also to supervise and inspect construction, thus freeing a number of State engineers and inspectors for other projects. In Pennsylvania, we have been looking into the possibility of engaging our consultants to design the project, acquire the right-of-way and supervise and inspect the construction.

Another method, which we are currently making as much use of as possible is to contract with the local Urban Redevelopment Authority (hereinafter referred to as LPA) to acquire the property, relocate the families and businesses and clear the right-of-way by relocating utilities and demolishing the structures. There are several advantages to be gained by a State Highway Department utilizing a local public agency to acquire and clear its right-of-way. First of all, it will free highway department right of way personnel, appraisers and attorneys from the very complex problems which necessarily accompany an urban project. Secondly, the problem of answering Bureau of Public Roads citations will be practically eliminated because BPR recognizes the acquisition practices and procedures of LPA's action under Urban Renewal authorization as being compatible with theirs. Also, BPR will accept the audit of HUD as protecting the Federal interest and, apparently, will not conduct its own audit.

Before an agreement with a local redevelopment authority is concluded, however, be sure that the lands which have been acquired or are to be acquired on behalf of the State Highway Department were acquired or are to be acquired in cooperation with the Department of Housing and Urban Development. If they were or are to be so acquired, then the highway department may enter into an agreement with LPA as set forth in PPM 80-1, paragraph 6. More about this aspect later.

If, however, the LPA was not acting in cooperation with HUD or is not going to so act in acquiring the necessary property -- in other words, if LPA is not receiving HUD funds, -- one cannot take

advantage of the provisions of PPM 80-1, paragraph 6. In such a case, BPR will recognize the LPA as an agent of the State and will require the State and LPA to act in accordance with paragraph 4(d) of PPM 80-1.

Where LPA has not or is not going to utilize funds from HUD, the highway department must first establish to BPR that the LPA is qualified and equipped to handle the land acquisition project. Generally, this should not be difficult in the case of a Redevelopment Authority that has been receiving funds from HUD on other projects.

Next, and this is where the trouble often occurs, such an organization may be used only if its practices and procedure are in conformity with the State's practices and procedures as set forth in the State's answer to the thirty-five (35) questions found in PPM 80-1. However, BPR has authority to approve the practices and procedures of the LPA where it is deemed appropriate. As we understand this from our Division Office in Pennsylvania, LPA will be required to answer the thirty-five questions and these will then go through the normal channels from Division to Region to Washington.

In Pennsylvania we now have a project where we propose to utilize the services of the Urban Redevelopment Authority of Pittsburgh to acquire land for us on a portion of I-79 in the City of Pittsburgh. There are no HUD funds involved in this project, and therefore the LPA is going to act as the State's agent under paragraph 4(d). The LPA uses appraisal form which has been approved by HUD; the appraisers for LPA are accustomed to this form; LPA is accustomed to it; and while it does not contain all the detailed information found in the State's form, its information is adequate. Our Division Office has not approved this form, and has categorically stated that since the LPA is acting as our agent they must utilize our form as approved by BPR, notwithstanding the fact that LPA's form has been approved by HUD. If we anticipated a great number of projects where the LPA would be acting as our agent, it would be worth the time and effort to have them answer the thirty-five questions and ultimately get BPR approval. However, neither the State nor LPA anticipate further projects where they would act solely as State agent.

It is our opinion that par. 4(d) of PPM 80-1 should be applied only where LPA is a political subdivision such as a County or City. In such an instance the County or City should be required to follow the approved policy and procedure of the State, or should be required to answer the thirty-five questions and obtain BPR approval

of their policy and procedure. Where, however, the LPA is an Urban Redevelopment Authority that has adopted a policy and procedure that has been approved by HUD, another Federal agency, it should not be required to follow State procedure or get a second Federal agency to approve their procedure just because they are not using HUD funds in their project.

It is the position of the Pennsylvania Department of Highways and the Urban Redevelopment Authority of Pittsburgh in particular, that where the Authority has a policy and procedure for land acquisition that has been approved by HUD they should be permitted by the Bureau of Public Roads to utilize this procedure regardless of whether or not HUD funds are being used by the LPA for acquisition.

The only reason we have heard for the present policy of terming them an "agent of the State", and requiring them to follow the approved State policy and procedure, is that they are not subject to audit by HUD in such a situation. This problem could be solved by providing in the agreement that the LPA will be subject to audit by BPR or, if this should prove too difficult in that BPR auditors do not know the audit procedure of HUD, by providing that HUD will make the audit and be reimbursed for same by the State.

As a result of the position of BPR and LPA's refusal to acquire in accordance with our policies and procedures, the State has lost many months of valuable lead time on an important segment of the Interstate system. Since there are a very large number of families to be relocated by this project and this too was to be undertaken by LPA, it appears that construction will not be completed by 1972. Further, since statistics indicate that LPA gets lower Viewer's Awards and jury verdicts in Allegheny County than the state highway department, it is evident that the 90% share to be paid by BPR will be substantially higher than if acquisition were accomplished by LPA. It would seem to be in the Federal interest to seek to avoid this result.

Paragraph 4(d) of PPM 80-1 also states that BPR will not participate in the costs of maintaining the central office of LPA. This provision presents no problem if HUD funds are being used, but where LPA is considered an agent of the State a problem is created because the LPA naturally wants to be reimbursed for its overhead. BPR will participate in the costs of appraisers, negotiators, attorneys, etc., but it will not pay the cost of central office.

Paragraph 5(i) of PPM 80-1, which applies generally to reimbursable expenditures, contains a similar provision which provides that the administrative and headquarters expenses of the right of way offices or field offices are not eligible for Federal participation. It therefore appears that while BPR will not participate in the cost of overhead of LPA's central or field offices, it will participate in the incidental costs of surveys, plots, appraisals, appraisal review, abstracts of title, title certifications, title insurance, closing and escrow services.

The foregoing comments cover the situation that exists where the LPA is an agent of the State. What is the situation where the LPA is acting in cooperation with the Department of Housing and Urban Development? We have already stated that the State is eligible for reimbursement where lands are acquired for the State by LPA. This brings up the BPR formula for reimbursement in the various situations that may arise.

Where LPA acquired lands prior to any agreement with the State, say for example, where LPA acquired the lands as part of its own project and subsequently the State needs some of the land for highway purposes, there exist two criteria for reimbursement. First, if the improvements were already removed by LPA prior to conveyance to the State, Federal-aid participation is limited to the fair market value of the bare land without regard to the amount paid by LPA for the land, improvements and cost of clearing. Second, if the improvements have not been removed prior to an agreement being entered into between LPA and the State for conveyance to the State, then Federal-aid participation will encompass the fair market value as determined by costs to LPA. Thus, if the agreement states that LPA will demolish all improvements, Federal-aid participation will include the fair market value of the land and the improvements and the cost of demolition of the improvements.

The next situation involving Federal participation is where the LPA and the State enter into an agreement providing that LPA will acquire certain lands within its project and thereafter convey them to the State. In this case, reimbursement will be based on the fair market value paid by LPA, plus the cost of removal of improvements if the agreement between LPA and the State provides for demolition by LPA.

Where only part of a parcel acquired by LPA is required by the State for highway purposes, the agreement with LPA should contain a pro rata formula for allocation of costs between LPA and the State.

Experience in Pennsylvania indicates that the best method of allocating the pro rata share between LPA and the State is to determine the square foot value paid by LPA for the land and the improvements. LPA then charges the State so much per square foot based on the overall cost of the parcel. When such a formula is used, BPR will participate in the cost paid by the State even if the entire building or other improvement was located entirely within the area of the parcel retained by LPA for their purposes.

In order for the State to be eligible for Federal reimbursement, an agreement obligating the State to accept conveyance from LPA should not be entered into until the State has received Stage One approval for right of way and utilities from BPR. We have found, however, that certain circumstances may dictate that the State should enter into an agreement prior to Stage One program approval. This may occur because in the feasibility planning stage the State believes that a highway will pass through an Urban Renewal Project in an as yet undetermined location. In such a situation the State would want to insure that LPA does not convey the area to a redeveloper who may build a high-rise apartment house or other expensive structures within the area that may be needed for highway purposes.

In order to protect the proposed right of way for a reasonable time, the Pennsylvania Department of Highways has had an agreement approved by BPR Region 2, and I understand that New Jersey has had a similar agreement approved by BPR to cover the situation.

This agreement, a copy of which is attached to this paper, contains all the clauses necessary for LPA to acquire and convey property to the State for highway purposes. However, to protect the State from losing Federal participation by reason of not having received Stage One programming, we have added, as paragraph 12, the following language:

"Notwithstanding any of the above, it is hereby mutually agreed that the Commonwealth will, in fact, carry out the highway Plans which are presently tentative; that such assurances as those which relate to the highway delineation, construction plans and the like require additional consideration and governmental approval; and, as a result, the parties hereby acknowledge that the purpose of this Agreement is to provide an agreed upon format for mutually beneficial

cooperation between the parties hereto, if, as, and when, the Commonwealth actually carries out the presently tentative highway Plan. Prior to such final departmental approval and approval by the United States Bureau of Public Roads for the acquisition of right-of-way, it is agreed that the Commonwealth is under no obligation to purchase the property from LPA."

Notice also that our agreement provides not only for acquisition and conveyance by LPA to the State. It also provides that LPA will be responsible for relocation of displaced families and businesses and for demolition or removal of improvements. We also set forth a list of reimbursable items and provide that, if the properties are rented by LPA, the State will be credited with the net profit derived from the rentals against the price to be paid.

The Pennsylvania Department of Highways has had several contracts with LPA's around the State, but the largest undertaking by far is in the City of Pittsburgh involving construction of Interstate 79 and several other projects in connection with Urban Renewal Projects. For many years the State has been taken to task because of the so-called "bridge that goes nowhere". This bridge is on Interstate 79 and was constructed from Point State Park, which is part of the "renaissance area" of downtown Pittsburgh, across the Allegheny River to the Northside area and then continues on to Erie, Pennsylvania, where I-79 terminates. From time to time the newspapers have suggested that the bridge, which did not touch down on the Northside, be used as a parking lot, a carnival location, a fishing pier and a garbage dump.

There were various reasons why a touch down could not be made at an earlier date. First of all, there were several railroad tracks in the area that we knew were going to be abandoned in a couple of years; and it would have been very costly to relocate them for a few years. Secondly, the city was contemplating a new stadium in the area to house the Pittsburgh Steelers and the Pirates; and our engineers wanted to know its exact location in order to provide a network to connect to the Interstate system and other principal highways in the area which would be called upon to handle the high volume of traffic generated by sporting events. Once the final site for the stadium was selected, our design engineers made their final plans, the railroads began to phase out their operations in the area, and the State entered into a series of four agreements with the Urban Redevelopment Authority of Pittsburgh to acquire property, relocate families and businesses and demolish the improvements.

Land Acquisition by
Local Public Agency

AGREEMENT

THIS AGREEMENT made this _____ day of _____, 196____, between the Commonwealth of Pennsylvania, acting through the Department of Highways, hereinafter referred to as Commonwealth

a
n
d

the Local Public Authority, hereinafter called LPA.

WHEREAS, the parties hereto have agreed that their mutual interests will be served, and the duplication of Federal Programming avoided through an Agreement between the parties for a procedure for acquisition of lands where Legislative Route _____ passes through an Urban Renewal Project known as _____ located _____, and

WHEREAS, the parties hereto desire to set out under this Agreement the terms and conditions as to the acquisition of lands by LPA, the allocation of expense and the procedure of payment for the same which this Agreement shall witnesseth.

NOW, THEREFORE, in consideration of these presents and with the intent of being bound by the terms of this Agreement, the parties hereto do agree as follows:

1. That LPA shall acquire all properties located totally or partially within the limits of the proposed highway right-of-way in accordance with the attached LPA Parcel Property Map, attached hereto and marked Exhibit _____, and in accordance with Commonwealth's right-of-way Plan for L.R. _____, which is incorporated herein by reference. Said acquisition is to be completed, individuals, families and businesses to be relocated, and the structures caused to be demolished or removed as expeditiously as possible, but in no event later than as the LPA shall be advised in writing by a schedule of priorities furnished by the Commonwealth.

2. Commonwealth will reimburse the LPA on an individual parcel basis for only those items which are hereinafter enumerated as reimbursable expenses. Reimbursement to include and be in accordance with the items hereinafter listed as reimbursable.

3. Where the highway right-of-way lines are so located as to involve portions of parcels or properties, instead of parcels or properties in their entirety, it is agreed that reimbursement for such portions within the right-of-way shall be on an average cost per square foot basis. The proportionate reimbursement shall also include all items hereinafter listed as reimbursable. The breakdowns indicating the square foot areas shall be computed by LPA, and checked by Commonwealth prior to the time LPA submits invoices.

4. Where the parcel or property is totally within the highway right-of-way lines, reimbursement shall be one hundred percent (100%) of all reimbursable expenses incurred by LPA with respect to such parcel or property.

5. No reimbursement shall be made for overhead and/or administrative costs and no reimbursement shall be made for any items which are not compensable under the provisions of the Eminent Domain Code of 1964, approved on June 22, 1964 (P.L. 84).

6. Where a property or parcel which abutts the highway improvement is not to be acquired for LPA or Commonwealth purposes, but said property or parcel is damaged from a change of grade of an existing highway, or by permanent interference with access or injury to surface support, and by agreement between the parties or by award of Board of View or Verdict of Court, LPA is found liable for consequential damages in accordance with Section 612 of the Eminent Domain Code, supra, it is agreed that said damages shall be reimbursable under the terms of this Agreement.

7. Reimbursable expenses shall be those hereinafter enumerated and according to the procedure hereinafter set forth.

- a. Appraisal Fees including appraisals of Machinery and Equipment, when applicable.) As paid by LPA and approved by
- b. Negotiating Fees.) Dept. of Housing and
- c. Survey Costs.) Urban Development.
- d. Acquisition Purchase Price (amicable)- Not in excess of URA approved price and as actually paid by the LPA.

- e. Acquisition Purchase Price (condemnation) - The acquisition purchase price awarded by the Board of Viewers or Court of Common Pleas plus detention damages, where applicable.
- f. Settlement and Title Costs, including cost of title searches and report of title; preparation of all instruments of conveyance; cost of recording instruments of conveyance.
- g. Demolition and Site Clearance Costs.
- h. In the event the properties are acquired by condemnation, expenses included in reimbursement by Commonwealth shall cover:
 - (1) Service of process fees
 - (2) Recording fees
 - (3) Expert witness testimony fees
 - (4) Counsel fees
 - (5) Court stenographer fees, where applicable
 - (6) Other miscellaneous fees and costs which are normally incidental to the preparation and trial of a condemnation case.
- i. Notwithstanding any other terms of this Agreement, any expenditures resulting from the acquisition of any parcel or property under the terms of this Agreement, which shall be determined by a Board of Viewers, the Courts of the Commonwealth or Agreement between the parties hereto, to be costs or damages for which the LPA is liable under the common law or statutory law of the Commonwealth of Pennsylvania in Eminent Domain or similar proceedings, shall be reimbursable expenditures under the terms of this Agreement. In no event shall reimbursable expenditures be more than the actual verified expenses which the LPA shall incur in the acquisition of any such parcel or property or vacated street or public way abutting any parcel or property.
- j. Relocation payments, expenses and business dislocation damages as provided by Sections 607, 608, 609 and 610 of the Eminent Domain Code, supra, subject to any revision or amendment to said Act, provided, however, that any expenditures which the LPA shall incur which are reimbursed to the LPA in full under a relocation grant from

the Federal Government pursuant to the Housing Act of 1949, as amended, shall not be reimbursable expenditures under the terms and conditions of the Agreement.

8. TIME OF REIMBURSEMENT.

Commonwealth shall reimburse LPA for all reimbursable expenses as they are incurred by LPA within three weeks after receipt by the Commonwealth of the verified semi-monthly statement of LPA setting out specifically the reimbursable expenditures incurred by LPA with reference to the parcels or properties for the account of which said expenditures were incurred.

LPA agrees to keep accurate records of all items for which reimbursement is to be made and to make same available to the Commonwealth for Federal Bureau of Public Roads auditors for inspection and audit for a period of three years after the Federal Bureau of Public Roads has made payment on Commonwealth's vinal voucher.

However, it is recognized that Right-of-Way and acquisition practices and procedures of LPAs are under Urban Renewal Administration supervision and such authorizations are accepted as being compatible with those of Federal Bureau of Public Roads. Therefore, evidence of audit verification of costs and policy requirements conducted by the Department of Housing and Urban Development will be acceptable as the required audit of LPA records for the Federal interest.

9. MANNER OF CONVEYANCE.

As soon as practical after acquisition, LPA shall convey to the Commonwealth an EASEMENT FOR HIGHWAY PURPOSES, which shall be unlimited in vertical dimension, in and over such parcels or properties acquired by LPA for highway purposes under the terms of this Agreement, on an individual parcel basis, the conveyance of said easement to be by deed of special warranty.

Each such conveyance of each easement shall:

- a. Be accompanied by a Certificate of Title evidencing that the fee simple title to said parcel or property is not encumbered, liened, mortgaged or subject to other interests save the easement conveyed to the Commonwealth by LPA and subject to the conditions of said conveyance.
- b. Be accompanied by the certification of LPA that the site of said parcel or property has been cleared and the improvements thereon demolished.

10. PROPERTIES WHICH ABUT "REQUIRED RIGHT-OF-WAY".

Any conveyance by LPA of parcels or properties acquired under the terms of this Agreement which abut the "required right-of-way" as defined by the official right-of-way Plan signed by the Governor of the Commonwealth of Pennsylvania, shall contain the standard indemnifying clause utilized by the Commonwealth concerning claims resulting from construction of the highway and its appurtenant facilities as well as the standard "denial of access" clause utilized by the Commonwealth for access to freeways or parkways is denied.

11. RENTAL OF PROPERTIES.

It is further agreed that if any property or properties acquired by the LPA on behalf of the Commonwealth are rented at any time after acquisition by the LPA, then any net profit received by the LPA from this rental income shall be credited to the sum or sums to be paid by the Commonwealth for the parcel or parcels acquired. It is specifically understood that that income is defined as being rental income less operating and administrative expenses of the LPA which are directly attributable to the Commonwealth parcels.

12. CONTINGENCY CLAUSE. (To be added where final alignment has not been determined).

Notwithstanding any of the above, it is hereby mutually agreed that the Commonwealth will, in fact, carry out the highway Plans which are presently tentative; that such assurances as those which relate to the highway delineation, construction plans and the like require additional consideration and governmental approval; and, as a result, the parties hereby acknowledge that the purpose of this Agreement is to provide an agreed upon format for mutually beneficial cooperation between the parties hereto, if, as, and when, the Commonwealth actually carries out the presently tentative highway Plan. Prior to such final departmental approval and approval by the United States Bureau of Public Roads for the acquisition of right-of-way, it is agreed that the Commonwealth is under no obligation to purchase the property from LPA.

13. The parties herein understand and agree, in the implementation and carrying out of this Agreement, that they will abide by all of the provisions of Title 6 of the Civil Rights Act of 1964, and in this regard will not discriminate on the grounds of race, color or national origin in the work performed by virtue of this Agreement and against salaried employes, personnel retained on a fee basis, independent contractors or any other personnel retained by either the

Commonwealth or LPA in connection with the performance of this Agreement. Further, the parties hereto agree to comply with the letter and spirit of all anti-discrimination regulations issued by the United States Department of Commerce or the Department of Housing and Urban Development, implementing the Civil Rights Act of 1964.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to affix their hands and seals the day and year first above written.

ATTEST:

COMMONWEALTH OF PENNSYLVANIA

(SEAL)

By: _____

Deputy Secretary of Highways

ATTEST:

LOCAL PUBLIC AUTHORITY

Title:

By: _____

Title:

APPROVED AS TO FORM AND LEGALITY

By: _____

Deputy Attorney General