
Section 5.3

INCENTIVE OFFERS

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Section 5.3

INCENTIVE OFFERS

PURPOSE

To set forth procedures, requirements and standards for approving and applying incentive offers for the Department of Public Works Office of Right of Way, hereinafter referred to as the Department.

AUTHORITY

23, CFR, Part 710.203 (b) (2) (ii)
49, CFR, Part 24
23, United States Code, Part 101(a) (3)

SCOPE

The principal users of this document are Department of Public Works Office of Right of Way employees and those persons contracted by the Department to perform parcel acquisition and incentive offer functions.

REFERENCES

Section 5.2, Negotiation Process
Section 5.6, Eminent Domain
Section 7.4, Replacement Housing Payments

FORMS

5.2-2 Offer and Purchase Agreement
5.2-4 Settlement Approval

5.3.1 Project Selection

5.3.1.1 Incentive projects must be recommended by the Department of Public Works ROW Supervisor (DPWRS) and approved by the Director of the Department of Public Works (DDPW), on a case-by-case basis. Approval will be granted upon a certification by the DPWRS that use of incentive offers is expected to reduce project time and cost, the project has a scheduled production date and condemnation will be pursued for those parcels which cannot be negotiated.

5.3.1.2 To provide consistency and equitable treatment of property owners, the Department will administer incentive offers consistently on an entire transportation corridor. When there are multiple right of way projects included within a single project area, the area will be considered a transportation corridor for the purpose of this procedure. If incentive offers are used on the earliest right of way project, they must be used on all right of way projects on the corridor. Similarly, if they are not used on the earliest right of way project, they will not be used on later right of way projects on the corridor. Exceptions to this may be allowed when offers on a right of way project will be made one year or more after the letting date for the construction project associated with the adjacent right of way project.

5.3.2 Incentive Offers

5.3.2.1 Incentive amounts will be added to initial offers on all parcels on approved projects. All parcel acquisition shall comply with this **Manual**, except as modified herein. Incentives will be an amount of money offered above the established just and full compensation. Incentives will be applied to all parcels on the approved projects except for parcels owned by governmental entities. No incentive will be added to offers to settle business damage claims.

5.3.2.2 Parcels with uneconomic remnants identified by the review appraiser will require separate offers pursuant to **Section 5.2, Negotiation Process**. Incentives for both offers will be based on the value of the partial taking without consideration of the remnant.

Example:

Appraised value of part taken	\$150,000
Appraised value of uneconomic remnant	\$ 20,000
Incentive (based on \$150,000)	<u>\$ 52,875</u>
Total Offer	\$222,875

5.3.2.3 Incentives for parcels affected by tenant-owned improvements, requiring a separate offer, pursuant to **Section 5.2, Negotiation Process**, will be shared between the property owner and the tenant. The incentive will be divided based on the percentage shares of the value for the whole property attributable to the owner and to the tenant respectively.

Example:

Total Parcel Value =	\$200,000
Value of Tenant Improvement =	\$ 40,000
Percentage of Total Value to Owner =	80%
Percentage of Total Value to Tenant =	20%
Incentive for Whole (\$200,000) =	\$ 66,625
Owner Incentive = 80% of \$66,630 =	\$ 53,300
Tenant Incentive = 20% of \$66,630 =	\$ 13,325

5.3.2.4 When there are multiple takings from the same parent tract, for example a fee and an easement, incentives will be provided for each parcel based on the just and full compensation for each parcel.

5.3.2.5 When the established just and full compensation changes prior to filing suit, the Department must respond as follows:

- (A) If there is a change in the determination of just and full compensation resulting from an alteration of the parcel which is of such extent that the parcel has become a different parcel from that on which the original offer was made, the Department must provide the property owner a new **Form No. 5.2-2, Offer and Purchase Agreement**, with a new incentive calculation based on the revised just and full compensation.
- (B) If there is a change in the determination of just and full compensation, other than as in **Section 5.3.2.5 (A)**, and the revised just and full compensation is more than the total previous offer (just

and full compensation plus the incentive), a revised offer must be made using **Form No. 5.2-2, Offer and Purchase Agreement**. No incentive will be included in the revised offer.

- (C) If there is a change in the determination of just and full compensation other than as in **Section 5.3.2.5 (A)**, and the revised just and full compensation is less than the total previous offer (just and full compensation plus the incentive) no new offer shall be made unless the previous offer had previously been formally withdrawn.

5.3.3 Establishing the Incentive Amount

Incentive amounts will be determined as follows:

Incentive Offer Computation

Approved Compensation is		Incentive	of Amount Over
Over	But Not Over		
\$0	\$1,000	\$1,000	
\$1,000	\$2,500	\$1,000 + 83.3%	\$1,000
\$2,500	\$5,000	\$2,250 + 70%	\$2,500
\$5,000	\$7,500	\$4,000 + 50%	\$5,000
\$7,500	\$10,000	\$5,250 + 45%	\$7,500
\$10,000	\$20,000	\$6,375 + 40%	\$10,000
\$20,000	\$30,000	\$10,375 + 35%	\$20,000
\$30,000	\$100,000	\$13,875 + 32.5%	\$30,000
\$100,000	\$300,000	\$36,625 + 30%	\$100,000
\$300,000	\$513,500	\$96,625 + 25%	\$300,000
\$513,500		\$150,000	

Note: Incentive amount should be rounded to the nearest ten dollars.

5.3.4 Duration of the Incentive

Incentives will be held open to the date of filing suit. Property owners must be clearly advised of the expiration date of the incentive.

5.3.5 Negotiations

5.3.5.1 Application of incentive offers does not replace the need for aggressive negotiations. The Department must consider all property owner counteroffers.

5.3.5.2 Negotiations conducted after the Department files suit will be based on established just and full compensation without consideration of an incentive.

5.3.5.3 To the extent possible, settlements exceeding established just and full compensation plus the incentive must be avoided. Legal settlements, as defined in

Section 5.6, Eminent Domain, exceeding just and full compensation must be avoided unless additional information or circumstances arise that would cause a change in the Department's determination of just and full compensation, for example, a change in design.

5.3.6 Administrative and Legal Settlements

5.3.6.1 Form No. 5.2-4, Settlement Approval, is not required for those parcels settled in an amount equal to the Department's established just and full compensation plus incentive, provided the settlement is achieved prior to expiration of the incentive pursuant to **Section 5.3.4**.

5.3.6.2 All settlements above just and full compensation plus the incentive obtained while the incentive is open or which exceed the Department's established just and full compensation after expiration of the incentive, must be justified on **Form No. 5.2-4, Settlement Approval**, in accordance with **Section 5.2, Negotiation Process**. The full amount of the increase above established just and full compensation including the incentive must be supported.

5.3.6.3 If the DPWRS or the Department's representative at mediation determines that a settlement as described in **Section 5.3.6.2** is necessary, the factors supporting the decision must be documented on **Form No. 5.2-4, Settlement Approval**, in addition to support for the amount of the increase.

5.3.7 Effect of Incentive on Relocation Entitlements

Replacement Housing Payment (RHP) calculations for residential owners who have accepted offers with incentives will be based on the amount determined to be just and full compensation. The incentive will not be considered in the calculation and will not offset the amount of the RHP. However, where settlements exceed just and full compensation plus the incentive, **Section 5.3.6** or the incentive has expired, **Section 5.3.4**, the RHP will be determined based on the requirements of **Section 7.4, Replacement Housing Payments**.

5.3.8 Eminent Domain

When parcels on the incentive projects must be acquired by eminent domain, the Department will file condemnation based on approved just and full compensation. The incentive amount will not be included. The Department should aggressively defend this value throughout the litigation process unless additional information or circumstances arise that alter the Department's determination of just and full compensation, such as a change in design.

5.3.9 Fees and Costs

If the DPWRS determines that it is reasonable and prudent to pay attorney fees or costs in addition to the incentive, the amount of the attorney fees or costs must be justified on **Form No. 5.2-4 Settlement Approval**.

5.3.10 IRS Reporting

For parcels settled with incentives, the incentive amount will be included in "Gross Proceeds" when being reported to IRS on **Form 1099-S**.

HISTORY

Original Issue Date: 2009

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