
Section 8.2

RIGHT OF WAY CLEARING

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Section 8.2

RIGHT OF WAY CLEARING

PURPOSE

To establish uniform procedures for clearing of all improvements, personal property, and severable items prior to construction letting for a transportation facility of all real property acquired by the Guam Department of Public Works Office of Right of Way (Department) and compliance with procurement regulations, construction contracting laws and regulations for effective removal of improvements from the right of way.

AUTHORITY

23 CFR, Part 710.103
29 CFR, Parts 1 and 3
5 GCA § 5001 Purpose, Rules of Construction

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 right of way clearing functions.

REFERENCES

29 CFR, Subpart 3, Copeland Regulations
29 CFR, Subtitle A, Part 1, Davis/Bacon Act
49 CFR, 24.2 (s)
49 CFR, 29.510
Federal Wage Rate Table, Exhibit A
NADA Mobile Home Appraisal Manual
5 GCA, Chapter 5, Guam Procurement Law
10 GCA §76104 Powers and Duties
Right of Way Manual, Section 5.2, The Real Property Negotiation Process
Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance
Right of Way Manual, Section 8.7, Asbestos Management
Right of Way Manual, Section 9.3, Right of Way Records Management

FORMS

5.2-6 Release and Right of Entry Agreement for Asbestos Survey
5.2-8 Property Inventory

DEFINITIONS

Items or improvements acquired in the right of way acquisition process are defined in the ***Right of Way Manual, Section 8.1 Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance.***

Clearing and Grubbing: This term is used specifically to refer to the clearing of rights of way. It relates to situations where remaining items, normally trees, stumps, roots, other protruding objects, and possibly buildings, structures, appurtenances, abandoned personal property, and existing pavement, are removed under the construction contract.

Improvements: Structures erected permanently on a site, including but not limited to subsurface improvements, buildings,

fences, driveways, and retaining walls.

Minus (or Negative) Bids: These pertain to minus contracts which are those requiring an expenditure of funds by the Territory of Guam.

Negotiated Sale: The direct sale to the public of property acquired by the Department and owned by the Territory of Guam and determined to be surplus. For a negotiated sale, the sales price is reached by agreement between the Department of Administration (DOA), the General Services Administration (GSA) and the purchaser.

Official File: Documentation required to be maintained in the Department's Office in a central location pursuant to the **Right of Way Manual, Section 9.3, Right of Way Records Management.**

Plus (or Positive) Bids: Bids requiring payment by the bidder to the Territory of Guam in order to perform the demolition or removal work.

Retention of Improvements: Takes place when the property owner elects to retain possession of severable improvements, including houses, which can be moved or demolished. This term refers to both real and personal property.

Salvage Value: The probable sales price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis per **49 C.F.R. 24.2(s)**.

Transfer of Improvements or Severable Items: Occurs when the Territory of Guam obtains possession of improvements or severable items and the Chamorro Land Trust Commission (CLTC), DOA or GSA conveys ownership of these items to another governmental agency.

8.2.1 Disposal of Improvements and Severable Items

8.2.1.1 The CLTC, DOA or GSA shall attempt to sell improvements or severable items acquired during acquisition of right of way when these items are not needed by the Department for the construction, operation, or maintenance of transportation facilities or are not transferred to other governmental agencies. The potential sale of severable items should always be considered before including them in demolition and removal or clearing and grubbing activities when sale proceeds would exceed the cost of selling the items in a demolition contract.

8.2.1.2 Items can be sold by negotiation, competitive bid, or through the demolition and removal contracting process. See **Section 8.2.6.**

8.2.1.3 Actions for disposal of severable items that will not be disposed of by clearing and grubbing shall be initiated within **120 days** of possession except in the event the parcel is leased or an asbestos survey has yet to be obtained. Disposal is not required during the period of such lease.

8.2.1.4 Properties acquired by advance acquisition are temporarily exempt from **Sections 8.2.1.2 and 8.2.1.3.** The intent of this exemption is to allow severable items to remain with the structure for future leasing purposes. Periodic inspections must be performed for security and maintenance purposes. If not leased, inspections must be conducted not less than every **120 days.**

8.2.1.5 The Department of Public Works Right of Way Supervisor (DPWRS) or designee shall review inventory updates of properties which are not leased to determine if vandalism is occurring. If vandalism occurs, the DPWRS shall take necessary measures to make sure the building is secure from further entry. If the property continues to be vandalized or becomes a public hazard, the remaining severable items should be disposed of. **Nine months** before construction is scheduled to begin, **Sections 8.2.1.1 through 8.2.1.4** will become effective for all advance acquisition properties which are within the right of way limits for the project, unless vandalism occurs prior to this time.

8.2.2 Owner Retention

8.2.2.1 The property owner may elect to retain an improvement(s) or other item(s) identified in the approved appraisal used for acquisition that may be lying partially or entirely in the right of way acquired by the Department. A survey to determine the presence of asbestos, pursuant to the **Right of Way Manual, Section 8.7, Asbestos Management**, is required for that portion of a structure affixed to the property acquired by the Department. Additionally, since the Territory is the legal owner to all structures or parts of structures affixed to lands acquired by the Department (even if the Department allows owner retention of a structure(s)), the Territory is responsible for meeting all Federal and Territory requirements for the removal of all asbestos containing materials. The former owner may perform a cut and reface of a building and contract for asbestos removal; but the Territory, as the legal owner acting through the Department is responsible for assuring that all appropriate notifications are made and for paying all fees in accordance with all applicable laws.

8.2.2.2 In accordance with the **Right of Way Manual, Section 5.2, Negotiation Process**, owner retention may be offered during the course of negotiations. The retention value, equal to the salvage value, of the improvement(s) or other item(s) shall be established by an estimate prepared or approved by the Department, pursuant to **Section 8.2.4.2**. The retention, salvage, value estimate shall be signed, dated, and retained in the Department's official parcel file.

8.2.2.3 The Department shall provide a time frame in the purchase agreement or court order for removal of the improvement(s) or other item(s) by the owner. The property shall be inspected to provide removal within **one week** after the date given by the Department. If the improvement(s) has not been removed, the Department shall initiate removal of the improvement(s) in accordance with the original agreement. However, at the option of the DPWRS, the owner may be given additional time to remove the improvement(s). If the improvement is still not removed at the end of this extended time period, the Department shall, dependent upon the written terms and conditions, either pursue enforcement of the purchase agreement or court order or shall initiate removal of the improvement(s) in accordance with this Section.

8.2.3 Retention by DPW and Transfer

- (A)** If there is a need by the Department or a request is received from another agency, severable items may be retained by Department or transferred by the CLTC, DOA or GSA to other governmental entities. If the property to be transferred to another governmental entity is to be used for a public purpose the transfer may be transacted without consideration, with the Departments official parcel file so documented. However, if the property to be transferred is to be used for other than a public purpose by the governmental entity, then the provisions of **Sections 8.2.4 and 8.2.5** shall apply. If a request is received which requires extension of this time frame, the Department's official parcel file must be so documented.

8.2.4 Negotiated Sale

8.2.4.1 Negotiated sales are permitted only when the estimated salvage/retention value for any severable item on a parcel is \$10,000 or less.

8.2.4.2 The negotiated sales price of a severable item shall not be less than the estimated salvage value.

- (A)** The salvage value is estimated by visual inspection, by comparison to similar improvements previously sold as salvage, and by reviewing the approved appraisal used for acquisition. When comparing improvements, consider the type of area, urban or rural, size, condition, quality, type of construction, and the marketability of the improvement. Three or more comparable sales should be used, if available. The salvage value estimate must be well documented, dated, signed by the evaluator, and retained in the Department's official parcel file.
- (B)** If an item has no salvage value, a salvage value estimate of zero dollars (\$-0-) shall be prepared to document this.
- (C)** To determine the salvage value of mobile homes, three or more comparable sales should be used, if available. When comparable sales cannot be found, estimates should be obtained from mobile home

dealers in the area or from an estimate based upon the current **NADA Mobile Home Appraisal Manual**. Documentation of salvage value estimates shall be retained in the Department's official parcel files.

8.2.5 Sealed Bids

8.2.5.1 When a determination by the Department has been made to dispose of surplus severable items, the CLTC, DOA or GSA Chief Procurement Officer may sell these items by sealed bid after duly advertising as required by 5 GCA § 5211. The invitation to bid shall run in a newspaper of general circulation a reasonable time prior to bid opening. The advertisement shall state the date, time, and place of the bid opening, a brief description of the procurement, and where more information may be obtained. The sealed bid opening shall be held at the location specified in the advertisement.

8.2.5.2 A minimum bid may be specified but may not be less than the current established salvage value. If a minimum bid amount is specified, it shall appear in the advertisement as well as a statement that the Government of Guam reserves the right to withdraw the property if the specified minimum bid is not received. If the minimum bid or the estimated salvage value amount is not obtained, the CLTC, DOA or GSA Chief Procurement Officer or authorized designee, may approve the highest bid received. Otherwise, the item must be disposed of by negotiated sale under the requirements of **Section 8.2.4**.

- (A) If the specified minimum bid or the estimated salvage value amount is not obtained at the first sealed bid opening, the CLTC, DOA or GSA Chief Procurement Officer may advertise a second time. A second advertisement is optional.
- (B) If the specified minimum bid or estimated salvage value amount is not obtained, the CLTC, DOA or GSA Chief Procurement Officer, or authorized designee, may approve the highest bid obtained during the bid opening.

8.2.5.3 When the CLTC, DOA or GSA receives an invoice from the newspaper, it shall be processed in accordance with that agencies procedure.

8.2.6 Sale of Severable Items/Improvements Through the Demolition and Removal Contracting Process

8.2.6.1 If it is determined not to be feasible or practical to dispose of severable items through the negotiated sale or sealed bid process, removal of improvements may be incorporated into the terms of the demolition and removal contract.

8.2.6.2 Circumstances which warrant this method of disposal are: The Department is not able to store and dispose of the items independent of the sale for demolition and removal; or the removal, storage and disposal costs are not economically feasible.

8.2.6.3 A record of the disposition of these improvements shall be documented pursuant to **Right of Way Manual, Section 8.1, Inventory of Properties Acquired Through the Right of Way Process; Rodent Control Inspections; Maintenance.**

8.2.7 The Sale Closing

8.2.7.1 The CLTC, DOA or GSA Chief Procurement Officer and DPW or an authorized representative shall conduct the closing.

8.2.7.2 The CLTC, DOA or GSA Chief Procurement Officer shall receive from the purchaser the payment due on the sale in the form of a cashier's check or other noncancellable instrument. No personal checks or cash will be accepted.

8.2.7.3 The purchaser is to receive a receipt.

8.2.7.4 The following is to be forwarded to the selling agencies records:

- (A) Documentation showing the deduction of any appropriate sales tax;
- (B) Copy of the receipt

- (C) Payment or payment balance received from the purchaser.

8.2.8 Demolition and Removal Contracting

8.2.8.1 If improvements are not sold, removed by the owner, or retained or transferred by DOA, the Department may let a contract for demolition and removal by acceptance of sealed bids after duly advertising in accordance with **5 GCA, Chapter 5, Guam Procurement Law**. Procurement of demolition and removal services shall be in accordance with **5 GCA, Chapter 5**. Demolition and removal of the improvements to clear the right of way takes place after the conclusion of any asbestos survey and abatement/removal work, if required. Refer to **Right of Way Manual, Section 8.7, Asbestos Management**.

8.2.8.2 When minus bids have been submitted, the DOA, GSA Chief Procurement Office or the Department may opt to clear improvements by clearing and grubbing. **Right of Way Manual, Section 8.7, Asbestos Management**, must be complied with prior to clearing and grubbing, and the DPWRS, or authorized designee, must give written approval of the use of this method.

8.2.8.3 If the improvement is occupied, a written statement must be obtained from the occupant stating there is no objection to advertising for demolition and removal contract bids. The requirement for a written statement may be waived by the DPWRS, when in the public interest, provided no demolition activity is to be initiated before all occupants have vacated the property. The waiver should substantiate the reason for such a waiver and will usually be implemented to avoid a project delay. For example, it would be especially helpful when dealing with apartment buildings with numerous tenants.

8.2.8.4 On projects with federal aid, minus contracts exceeding \$2,000 require compliance with **29 C.F.R., Subtitle A, Part 1, Davis/Bacon Act**, regarding the payment of predetermined minimum wages to certain employees and **29 C.F.R., Subpart 3, Copeland Regulations**, regarding the submission by the contractor of payrolls and payroll information. The Department shall be responsible for determining that wages are paid at acceptable levels and for reviewing payroll records submitted to the Department to provide compliance with requirements of these regulations.

8.2.9 Advertising for Demolition and Removal Contracting

8.2.9.1 No advertisement for bids on a particular parcel(s) shall be published and no bid solicitation notice shall be provided until title to all necessary rights of way and easements for the parcel(s) covered by such advertisement has vested in the Territory of Guam and utility agreements have been executed for such parcel(s). Title to all necessary rights of way shall be deemed to have been vested in the Territory of Guam when such title has been dedicated to the public or acquired by prescription.

8.2.9.2 The invitation to bid shall run in a newspaper of general circulation in the Territory a reasonable time prior to bid opening. The advertisement shall state the date, time, and place of the bid opening, purpose of the bidding, and where more information may be obtained.

8.2.10 Preparation for Bid Proposal

8.2.10.1 Invitation for bids shall be in accordance with 5 GCA § 5211(b) requirements. Public notice of invitation to bid shall be in accordance with 5 GCA § 5211(c) requirements.

8.2.11 Opening Sealed Bids and Bidder Selection

8.2.11.1 Bid opening shall be in accordance with 5 GCA § 5211(d) requirements. Bid acceptance and bid evaluation shall be in accordance with 5 GCA § 5211(e) requirements. Bidder selection and contract award shall be in accordance with 5 GCA § 5211(g) requirements.

8.2.12 Contracts

8.2.12.1 All contract terms shall be previewed by Office of the Attorney General (OAG) Counsel and final legal approval shall be secured before execution of the contract by the Department and after execution by the contractor. Provisions for the erection of berms, fences, or signs to discourage dumping may be included in the demolition contract at the discretion of the Department. No demolition shall begin prior to execution of the contract. If work is to be performed after the contract expires, an extension of contract shall be submitted. See **Section 8.2.15**. All contracts shall:

- (A) Have all blanks on the contract form completed;
- (B) Have, as consideration, a dollar amount equal to the bid amount plus any applicable tax (for plus bids), unless the contractor provides a tax exemption number;
- (C) Contain verified item/segment and parcel numbers;
- (D) Contain the contractor's social security number or federal identification number on page one of all copies;
- (E) Contain the name of the contractor on page one of all copies, such name being consistent with the signature of execution. Signatures shall be as follows:
 - (1) An individual shall sign for himself/herself or attach a power of attorney if the instrument is executed by an agent;
 - (2) Any member of a partnership may sign the contract. The partnership name shall appear above the signature, and the person signing should denote himself/herself as a partner;
 - (3) If the contractor is a corporation, the president, vice president, or chief executive officer shall sign the contract. The name of the corporation shall appear above the signature. The signature shall be attested by the secretary or assistant secretary, and the corporate seal shall be affixed; or
 - (4) When a contract, bid proposal, or surety is executed for an unincorporated firm operating under a fictitious name, the words "Not Inc." shall appear after the name. The name of the person signing for the firm shall be noted.
- (F) The Department shall reserve the right to cancel the contract at any time without liability to the Government of Guam. In the event of cancellation the contractor shall be compensated for any work completed satisfactorily at the time of cancellation.

8.2.12.2 Contracts involving underground storage tanks shall have appropriate **Special Provisions for Underground Fuel Storage Tank Removal** attached. This supplement to the contract relates to requirements of the Guam Environmental Protection Agency.

8.2.12.2 Contracts are assigned a number by the Department.

8.2.12.4 For minus bids, where the selected bid requires some expenditure by the Department, the department shall complete an Encumbrance Memo to the DDPW. Upon receiving approval from the DDPW, the Department may proceed with the signing of the Contract. After execution, one original fully executed contract and one copy of the approved contract, or the contract status change form, shall be submitted to the DPW Chief Procurement Officer.

8.2.12.5 After selection of a responsive bidder for plus bids, where the selected bid requires some payment of funds to the Territory, the DPW Chief Procurement Officer may proceed with the signing of the Demolition and Removal Contract.

8.2.13 Bid Security and Performance Bonds

8.2.13.1 A bid security shall be required when the total price is estimated by the Chief Procurement Officer to exceed \$25,000. The bond may be a surety bond by a surety company authorized to do business in Guam, an equivalent cash bond or otherwise supplied in a form satisfactory to the Government of Guam. The requirement for such bonds on procurement of supplies or services totaling less than \$25,000 may be required and such requirement will be included in the invitation to bid solicitation package.

8.2.13.2 There is no requirement for a performance bond. The bid security held until completion of the contract is deemed to be satisfactory to adequately protect the best interest of the Government of Guam.

8.2.13.3 For all procurement contracts, the bid security amount shall be equal to 15% of the total amount bid.

8.2.14 Performance of Demolition and Removal

8.2.14.1 The successful bidder may not begin work until he/she receives the Notice to Proceed (NTP). This notice shall be sent to the bidder by Certified Mail, Return Receipt Requested or hand delivered. The return receipt shall be placed in the Department's official parcel file. If this document is hand delivered to the successful bidder, a signed receipt shall be obtained and placed in the Department's official parcel file.

8.2.14.2 In order to facilitate the disconnection of utilities, the Department shall notify the utility companies of the date on which demolition and removal services are scheduled to begin and request disconnection. If no utility disconnections are necessary, the Department's official parcel file shall be so documented.

8.2.14.3 The Department shall be responsible for providing the required notification to the Guam Environmental Protection Agency (GEPA), in accordance with the **Right of Way Manual, 8.7, Asbestos Management**. The contractor shall begin work on the date specified in the notice.

8.2.14.4 Monitoring of the demolition or removal contract by the Department shall be documented in writing and maintained in the Department's official parcel file. Photographs may be used to support written documentation.

8.2.14.5 A contractor shall complete a Contract Completion Report, upon satisfaction of the contract as determined by the Department.

8.2.14.6 Upon satisfactory completion of services and completion of the Contract Completion Report, the cash bond shall be returned to the contractor, or the surety company shall be notified to terminate the bond.

8.2.15 Extension of Time, Supplemental Agreements, and Authorization for Additional Work

8.2.15.1 In the contract, the Department shall give the contractor sufficient time to complete the required services. Failure to complete the contractual obligations on time may constitute default. The contractor may be liable for liquidated damages if the contractor is delinquent in completing his/her contractual obligations. Additional penalties and daily liquidated damages may be assessed for failure to timely complete solely Territory-funded jobs. These shall be fully addressed in the contract.

8.2.15.2 An extension of time may be granted only upon the full execution of a supplemental contract.

- (A) The Director of the Department of Public Works (DDPW) and GSA Chief Procurement Officer shall be notified in writing by the DPWRS, of any proposed extension, with a brief explanation of the circumstances.
- (B) Any supplemental agreement modifying any item in the original contract shall be approved and executed by the DDPW and GSA Chief Procurement Officer or authorized designee.
- (C) All supplemental agreements shall receive the OAG Counsel's approval prior to execution by the Department.

8.2.15.3 If a change or addition is needed and a verbal agreement has been reached with the contractor, the Department shall prepare the appropriate document for execution by the contractor and the DDPW, GSA Chief Procurement Officer or authorized designee. A written supplemental agreement or contract shall be executed prior to authorizing the additional services except when the change does not exceed 5% of the original contract amount. Additional work shall be approved only in instances where time considerations are critical to a project. All supplemental agreements for additional work shall be approved, in writing, by the DDPW, GSA Chief Procurement Officer or designee prior to execution. The approval shall include justification as to why the additional work is necessary in relation to the time frame for completion of the clearing of the parcel.

8.2.15.4 Any change or addition to the contract which will cause any additional expenditure by the Department will require fund approval from the Treasurer of Guam prior to execution of the supplemental agreement by the Department.

8.2.15.5 If the supplemental contract increases the contract amount, it may be necessary to obtain additional security bonding. The bond shall, at all times, cover 15% of the amount of the total contract. The bonding agency shall sign any supplemental contract.

8.2.16 Payment on Contracts

8.2.16.1 For *Demolition and Removal Contract Plus Contract*, payment by the contractor shall be sent, immediately upon complete execution of the contract, to the GSA Chief Procurement Officer with one fully executed contract for processing by the GSA Chief Procurement Officer. Neither cash nor personal or business checks are acceptable. Payment shall be by cashier's check or other non-cancelable instrument and accompanied by a cash receipt.

8.2.16.2 For *Demolition and Removal Contract Minus Contract*, a request for payment shall be made to the GSA Chief Procurement Officer for processing by the Treasurer of Guam.

8.2.16.3 The request shall include:

- (A) An original and two copies of the Contract Completion Report, which contains the affidavit certifying the work was completed;
- (B) Original and three copies of the contractor's invoice;
- (C) Contract Invoice Transmittal (C.I.T.); and
- (C) Bid Tabulation Sheet.

8.2.16.4 The warrant shall be sent directly to the contractor unless other arrangements have been made.

8.2.16.5 Costs are not to be billed for any work performed prior to the execution date of the contract or for any work performed subsequent to the expiration date of the contract or contract extension.

8.2.17 Required Documentation

8.2.17.1 The following documentation shall be retained in the Department's official parcel file when documenting salvage value estimates and sale, retention or transfer of improvements:

- (A) Retention or salvage value estimate with three comparable sales, if available, dated and signed by the evaluator;

- (B) Mobile home estimates when comparable sales cannot be found;
- (C) Copy of Cash Receipt;
- (D) **Release and Right of Entry Agreement for Asbestos Survey, Form No. 5.2-6**, if applicable;
- (E) **Property Inventory, Form No. 5.2-8**; and
- (F) Payment or payment balance received from the purchaser.

8.2.17.2 The following documentation shall be retained in the Department's official parcel file when a bid package is used:

- (A) Advertisement and verification of publication;
- (B) Information bulletin, bid specifications;
- (C) Notice of protest rights;
- (D) Letter(s) to utilities or documentation that such is not needed;
- (E) Special provisions, if applicable;
- (F) Affidavit, from the successful bidder stating that the bidder had not participated in collusion or bid rigging;
- (G) Certification from the successful bidder regarding worker's compensation, if applicable and liability insurance coverage along with the current insurance certificates;
- (H) Certification from the successful bidder regarding vehicle registration;
- (I) Bid Tabulation Sheet;
- (J) The successful bidder's bid proposal;
- (K) The CLTC, DOA, GSA or DDPW concurrence in any bid rejection(s).

8.2.17.3 Additional documentation needed for the Department's official parcel file is:

- (A) One executed contract or photocopy including supplemental agreements, authorizations for additional work, and executed Affidavit or photocopy of a Non-Collusion Declaration and Compliance with 49 C.F.R. 29 statement or photocopy for Federal Aid parcels, if any;
- (B) Performance Bond, documentation of review and approval by the OAG Counsel, and power of attorney for a surety bond or Cash Receipt if a cash bond;
- (D) Cash Receipt, if a plus contract;
- (E) Contract Completion Report, ;
- (F) Contractor's invoice, if a minus bid;
- (G) Encumbrance memo, if a minus contract; and
- (H) Monitoring documentation.

HISTORY

Original Issue Date: 2009