# Remarks and Instructions

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Please contact Terry Meara at 360-705-7324 or MearaT@wsdot.wa.gov with comments, questions, or suggestions for improvement to the manual.

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Washington State Department of Transportation
Real Estate Services
PO Box 47338
Olympia, WA 98504-7338
[www.wsdot.wa.gov/realestate/default.htm](http://www.wsdot.wa.gov/realestate/default.htm)
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Washington State Department of Transportation  
Real Estate Services  
PO Box 47338  
Olympia, WA 98504-7338  
Phone: 360-705-7317  
Email: johnsoda@wsdot.wa.gov  
[www.wsdot.wa.gov/realestate/default.htm](http://www.wsdot.wa.gov/realestate/default.htm)
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Chapter 14

Design Build

Design-build is a method of project delivery in which the Washington State Department of Transportation (WSDOT) executes a single contract with one entity (the Design-Builder) for design and construction services to provide a finished product.

14-1 Rules

14-1.1 Federal Regulations

23 CFR 635.309(p).

23 CFR 710.313. Following are the relevant portions of this federal regulation which addresses the Real Estate requirements pertaining to Design-build projects:

A. In the case of a design-build project, right of way must be acquired and cleared in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the WSDOT’s right of way procedures. The WSDOT shall submit a right of way certification in accordance with 23 CFR 635.309(p) when requesting FHWA’s authorization. If the right of way services are included in the Request for Proposal document, the WSDOT shall ensure that right of way is available prior to the start of physical construction on individual properties.

B. The decision to advance a right of way segment to the construction stage shall not impair the safety or in any way 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 project right of way.

C. Certain right of way acquisition and clearance services may be incorporated into the design-build contract if allowed under State law.

Note: If WSDOT elects to have the right of way acquisition and related services performed under a design-build contract the additional requirements of 23 CFR 710.313(c) and (d) will apply.

14-1.2 State Procedures

Secretary’s Executive Order Number E 1059 Organization Conflicts of Interests, dated July 10, 2009

Design Manual Chapter 110

14-1.3 References

RCW 39.10.300 Design-build procedure – Uses

RCW 39.10.320 Design-build procedure – Project management and contracting requirements

RCW 39.10.330 Design-build contract award process
14-2 Acquisition of Right of Way

A. If the WSDOT elects to perform all right of way services relating to the design-build contract, the provisions in 23 CFR 710.313 will apply. The appraisal, acquisition, property management, and relocation processes outlined in this manual shall be followed. WSDOT will notify potential bidders of the status of all right of way issues in the request for proposal document. Chapter 16 further describes the requirements for using consultants to perform these activities on design-build projects.

B. If right of way services are performed under the design-build contract, the requirements of Chapter 16 apply.
Chapter 16  Use and Oversight of Consultants

Acronyms

ACL – Area Consultant Liaison
CSO – Consultant Services Office
FHWA – Federal Highway Administration
GEC – General Engineering Consultant
IRIS – Intergrated Realty Information System (RES’s information system)
OFM – Washington State Office of Financial Management (a division of the Washington State Department of Enterprise Services)
OFR – Oversight Feedback Review
PRES – project real estate services (includes any or all of the following: appraisal, acquisition, relocation, and property management services)
PM – Project Management
RES – Real Estate Services
RESM – Region Real Estate Services Managers
R/W – right-of-way
URA – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended
WSDOT – Washington State Department of Transportation

Purpose

This chapter is to be used by the WSDOT for guidance, oversight, and selection of right of way consultants. This chapter explains the requirements and conditions to ensure compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the Right of Way Manual M 26-01.

Authority

RCW 39.26 Procurement of Goods and Services
16-1 Non-A&E Professional Services Contracting by WSDOT Real Estate Services

16-1.1 General

The WSDOT Real Estate Services Office may require the services of consultants to accomplish project real estate services (PRES) tasks where WSDOT has insufficient expertise or staff availability and where the task duration does not justify enlarging WSDOT staff. In such instances, professional service contracts are initiated for PRES.

16-1.2 Types of Services

A. The types of project-level real estate services that might be required include:
   • Appraisal
   • Cost-to-cure/specialist estimates used in the appraisal process
   • Acquisition
   • Relocation assistance
   • Property management
   • RES project management

B. Because both the Title (Chapter 7) and Appraisal Review (Chapter 5) functions are inherently review processes, these activities will not typically be contracted. In the event in-house staff cannot be made available to perform these functions, Title work can be performed by consultants with the prior approval of the Acquisition Program Manager, and Appraisal Review work may be performed by consultants with the prior approval of the HQ RES Appraisal and Appraisal Review Program Manager.

C. Different types of professional services contracts may be used, depending upon the scope of services needed and specific criteria related to the project (e.g., geographic location, special knowledge and qualifications, and timeframe). The CSO can provide specifics on the professional service contracting process.

16-1.3 FHWA Compliance

When acquiring consultant services, WSDOT must comply with the requirements of the Federal Highway Administration (FHWA), including:

• Ensuring adequate oversight of consultant services for real estate activities as required by 23 CFR 710.201(h) on projects where right of way activities are being performed by consultants.

• Providing the opportunity for minority firms and women’s business enterprises to obtain an equitable share of the work for which consultants are engaged within the projected scope of work, their respective capabilities, and availability.
16-1.4 WSDOT Consultant Selection Process

A. Professional services contracts related to Real Estate Services are developed, processed, executed and administered by the WSDOT Consultant Services Office (CSO). The policies and procedures for procuring and managing professional services contracts are located in the Consultant Services Manual Chapters 2 and 3. These procedures are governed by RCW 39.26 under guidance and instruction from the Office of Financial Management. These procedures do not apply to contracts between WSDOT and other public agencies or to contracts between the Attorney General’s Office and private consultants.

B. In general, if a new agreement or a supplement to an existing agreement is needed, the requestor submits a completed request memo form to the Consultant Services Office. The CSO will manage the solicitation process, work with the requestor to develop and execute the agreement, and ensure that OFM filing requirements are met. The Request Memo form can be located on the Consultant Services Web page at wwwi.wsdot.wa.gov/consulting.

C. Each Region has an Area Consultant Liaison (ACL). They serve as a source of information and support on contracting procedures and contracts that are managed in the region. The CSO networks with the ACLs and provides training, policy, and process direction to them. They will be the regional conduit for processing real estate agreements through to the CSO and will collaborate with the RESM as needed.

D. When there is a need for a new task order for PRES, the RESM sends out an email requesting resource sharing to all regions with a copy to the appropriate Headquarters RES section manager. The email should include a discussion of the scope of work, expertise needed, a request for availability of department staff, and a reasonable deadline for response from the regions. If it is determined that there are no staff available, the region requests the task order from the CSO. Task order requests for appraisal, acquisition, property management, and relocation services must receive approval by the appropriate Headquarters section manager prior to submittal to CSO. CSO is the last step in the authorization to implement task orders.

E. Project specific and sole source agreements for PRES are the responsibility of the RESM for agreement initiation and management. These agreements will be processed through the CSO, who will facilitate the solicitation, scoring, selection, contract execution and OFM filing.

F. All supplements to task orders (including time extensions, increased funding, etc.) will be requested from and processed by the CSO. The CSO will also administer agreement closure, will maintain official contract files, and participate in audits as required.

G. The advertising and solicitation process will be based on direction from the Headquarters section manager and will be facilitated by CSO. Contracts shall be executed by CSO.
16-2 Approved Consultant List for Project Real Estate Services

A. Because eminent domain PRES is unique, it is practical to maintain a list of approved consultants that can be utilized when existing RES staff are unavailable to provide these services. All individuals who are consultants or staff of consultant firms who carry out PRES activities on federally funded projects, or on projects that may be later submitted for federal funding eligibility, must meet the minimum qualifications established by WSDOT (if a qualified list has been established by RES for the discipline area, the consultant’s name must appear on that list). It will be the responsibility of any individual on an approved list to keep current with required minimum qualifications and reapply as necessary.

B. The approved list will be administered and maintained from the HQ RES office and will be available on the WSDOT RES web page.

16-3 Real Estate Services Provided as Part of a Design Build or GEC Contract

A. In order to ensure full compliance with both Federal and State statutes, regulations, policies and procedures, oversight of contracted PRES activities under a design build or a GEC contract that might be performed by HQ RES or the appropriate RESM, as determined by Project Management, could include the following:

- Selection of PRES providers
- Oversight of PRES contract
- Management of deliverables (PFEs, title services, relocation plans, administrative settlement justifications, review and processing of payment requests, R/W certifications, and property management functions to include securing and policing acquired improvements)
- Review and approve actions and decisions recommended by the consultant
- Reviews, including spot checks and OFRs, to ensure performance measures are met

B. As a minimum, HQ RES and/or the RESM must carry out the following oversight activities on projects being performed under a Design-Build or GEC contract:

- Pre-project conference. Prior to the commencement of any PRES activities on the project, the Design-Build or GEC contractor and their sub-consultants for PRES will meet with HQ RES or the RESM, as appropriate, to discuss expectations and requirements for successful completion of PRES activities. This meeting will also be used to establish processes and protocols for such work, including reviews, payment procedures, and proposed schedules.
• Three Oversight Feedback Reviews. An OFR is a quality assurance review in which the Review team will present its findings and recommendations to Project Management. The intent of the OFR is to ensure that PM is provided an accurate picture of the status of RES activities on the project and, when deficiencies or issues of concern are found, that a list of corrective action options is provided.
  – The in-house Appraisal Review function will constitute the OFR for appraisals prepared by fee appraisers.
  – The next OFR will occur in the second or third month after the commencement of negotiations on the project, depending upon the number of acquisitions and relocations that have begun. A representative sample of files will need to be available for the OFR to be of most use to PM.
  – Another OFR will occur during the latter of the sixth month or the midway point of PRES activities on the project.
  – A final OFR will be performed as a pre-Certification review before the project can be certified per Chapter 17 and, if federal funds are participating, in accordance with 23 CFR 635.309 and 710.311 (710.313 for Design-Build projects).

• Project close-out meeting. At the conclusion of PRES activities and certification of R/W, the consultant and Project Management team will meet with RES HQ or RESM, as appropriate, to go over the findings from the HQ RES or RESM reviews and to ensure that any corrective actions identified in the OFR process have been completed, or that all necessary steps are in place for the consultant and Project Management team to complete such actions.

16-4 Payments and Data Entry

Unless otherwise determined by the Project Manager, all payment claims for acquisition settlements, condemnation costs (including court deposits), and relocation assistance payments will be processed through the RESM, as applicable, and HQ RES. In advance of the notice to proceed with PRES activities, the Project Manager and HQ RES and/or the RESM will determine what data will be entered into IRIS by the consultant and what will be entered by HQ or the Region.

16-5 Right of Way Certification

The Right of Way Certification 1, 2 or 3 for a Design-Build project or project under a GEC shall conform to the requirements of Chapter 17, specifically the section titled Design Build Certifications. For federally-funded projects, all R/W certifications will be forwarded to HQ RES for concurrence and then sent to FHWA (only “Excepted Parcel” Cert 3s require FHWA approval). For state-funded projects, all R/W certifications will be forwarded to HQ RES for concurrence.
Oversight Feedback Review (OFR)

The OFR is a tool used by RES to ensure that the program or project is carried out in full compliance with Federal and State laws, regulations, policies and procedures. As the name implies, the OFR serves three critical purposes:

- **Oversight** – These reviews fulfill our responsibility to FHWA to assure “…that acquisitions and disposals by a State agency are made in compliance with legal requirements of State and Federal laws and regulations.” [23 CFR 710.201(b)] In order to qualify for and maintain our accountability for Federal funding, WSDOT is required to “…be adequately staffed, equipped, and organized to discharge (our) real property related responsibilities.” [23 CFR 710.201(a)] We are also required by 23 CFR 710.201(h) to oversee the work performed by other public land organizations (e.g., local agencies) and private consultants. Failure to perform the required oversight can result in a variety of sanctions, including but not limited to loss of Federal funds on a parcel or project and/or withdrawal of Federal participation from future projects.

- **Feedback** – In order to ensure meaningful oversight, these reviews must provide feedback to the PM on the progress and performance of PRES activities. The format for this feedback will typically include a report of the findings of the review team, identification of successful practices found during the review, and a listing of any deficiencies or possible non-compliance issues. Also, the feedback will include an action plan and/or list of options to address deficiencies and noncompliance issues and will identify the HQ RES technical specialists who may be consulted for assistance in addressing these issues.

- **Review** – The overall format for the OFR will be to review not less than a representative sample of files and documents, as determined by the review team, and may include interviews with consultant staff to clarify findings from the initial file reviews. Typically, these reviews will be conducted on-site where the files and documents are located.

- **Consultant Access** – In order for the review team to carry out its responsibilities, consistent with WSDOT’s oversight commitment to FHWA and State requirements, the consultant must be available during regular business hours and the files must be readily accessible for the review team. The review team is not obligated to notify the PM of the files to be reviewed in advance of the on-site visit. However, the team will consider the consultant’s work schedule in setting up interviews with consultant staff.