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United States. A form of final certificate of title for easements approved by the Attorney General and issued by the Chief of Engineers as ENG Form 1017, Final Certificate of Title for Easements, will be used in easement acquisitions.

(2) In contracting for certificates of title to easements, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title, Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, may be used provided the following paragraph is substituted in the detailed specifications: ''Each certificate of title shall be executed in triplicate on legal size paper. Preliminary certificates of title shall be in the form attached hereto, ENG Form 903, and final certificates of title for easements, showing title vested in the United States, shall be in the form attached hereto, ENG Form 1017.''

(3) In jurisdictions where it is not possible to obtain certificates of title commercially, title guarantee (insurance) policies may be obtained. In such cases, appropriate adjustment in forms and specifications will be made, comparable to those prescribed for certificates of title to easements above.

(4) For easements costing more than $100 but not in excess of $5,000, the requirements of the Attorney General have been waived. In such cases, it is acceptable to use certificates of title prepared and executed by a qualified Corps of Engineers' attorney. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 25 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare an Abstract of Title evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(5) As to easements which cost $100 or less, acquisition shall be in accordance with the provisions of paragraph (5) on page 5 of ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States'' (Department of Justice, 1970) which permit such acquisition to be based on a last owner search. Any search authorized by these provisions may be conducted by a qualified attorney employed by the Corps of Engineers.

§ 644.63 Contracting for title evidence.

(a) *Survey of area and source of title evidence.* Contemporaneously with the preparation of the real estate design memorandum, or real estate planning report, the Division or District Engineer is requested to:

(1) Give careful consideration to the problems involved to determine the most acceptable type of title evidence, its source, availability of title plants, costs, and time of procurement, so that the most advantageous bid(s) may be received and accepted and the acquisition schedule maintained. In considering costs of abstracts of title versus certificates of title or title insurance, the workhours involved in the examination of abstracts of title by both Corps and Department of Justice personnel should be considered.

(2) Determine the total number of tracks in the project area. In major projects, it may be desirable to invite bids for title evidence for each county or other specified areas, in addition to the entire project, in order to maintain the acquisition schedule.

(3) Determine the names and addresses of title companies and abstractors available to furnish title evidence and whether such companies or abstractors have been approved by the Attorney General as acceptable companies or abstractors. Current information on approved title companies and abstractors may be obtained direct from the Land and Natural Resources Division, Department of Justice, WASH DC 20530.

(b) *Selection procedure.* (1) Normally selection of persons or firms to perform

title evidence services will be based upon formal advertising in accordance with the Armed Services Procurement Regulation (ASPR) (chapter I of this title).

(2) In those States where the furnishing of title evidence is held to constitute the practice of law and the State canons of legal ethics prohibit attorneys from engaging in competitive bidding for such services, contracts for title evidence services must necessarily be negotiated. In such cases, negotiations shall be conducted with attorneys or law firms duly authorized to practice law in the jurisdiction within which the real property is located. Division and District Engineers shall notify HQDA (DAEN-REA-P) WASH DC 20314 before negotiating for title evidence, and submit the list of attorneys with whom negotiations may be conducted. Selections shall be in accordance with the procedures set forth below:

(i) A contract for title services shall be based upon, but not limited to, consideration of the following professional qualifications necessary for the satisfactory performance of the services required:

(A) Professionally trained for type of work;

(B) Specialized experience in the type of work required;

(C) Capacity to accomplish the work in the required time;

(D) Past experience, if any, with respect to performance on Corps of Engineers contracts;

(E) Location in the general geographical area of the project to which the services relate: *Provided,* That there is an appropriate number of qualified attorneys or law firms therein for consideration; and

(F) Volume of work previously awarded, with the objective of effecting an equitable distribution of title evidence contracts among qualified attorneys and law firms.

(ii) A preselection list of qualified attorneys and law firms shall be prepared by a preselection board from data submitted by interested attorneys and law firms and from other pertinent information which may be available. The list shall be approved by the District Engineer or his designee.

(iii) A selection board shall review the qualifications of each of the attorneys or law firms on the preselection list, in accordance with the procedure established in paragraph (b)(2)(i) of this section and shall recommend to the District Engineer, in order of preference, a minimum of three for approval for contract negotiations.

(iv) Upon approval of the selections by the District Engineer and such approval as may be required by paragraph (b)(2)(vi) of this section, negotiations shall be initiated with the first selected attorney or law firm. If the negotiations result in a price which exceeds the Government estimate, revised to correct errors of fact or judgment, if any, by more than ten percent, the Contracting Officer shall terminate the negotiations and request a proposal from the attorney or law firm next in order of preference.

(v) Preparation of preselection lists and selections for contracts estimated to cost more than $10,000, shall be accomplished by formally constituted boards consisting of at least three members, one of whom shall be the District Counsel or an attorney on his staff, and one of whom shall be the Chief, Real Estate Division, or a member of his staff.

(vi) Special approval shall be required for certain selections as indicated below:

(A) When the estimated cost of a contract to be negotiated exceeds $100,000, the selection shall require the approval of the Division Engineer.

(B) When an attorney or law firm, to which the District has awarded contracts totalling over $100,000 during the current fiscal year, has been selected by the District for additional negotiations, the selection shall require the approval of the Division Engineer.

(C) When the estimated cost of a contract to be negotiated exceeds $200,000, the selection shall require the approval of the Director of Real Estate, OCE, or his designee, with the concurrence of the Chief Counsel or his designee.

(c) *Forms to be used.* When purchasing title evidence, Standard Form 33, Solicitation, Offer, and Award, which form embraces an invitation, bid, and acceptance, should be used with copies of ENG Form 1012 or ENG Form 1016,

depending upon the type of title evidence to be obtained. Standard Form 33 will state that time is of the essence; that ability to comply with delivery requirements is mandatory; that the specifications attached thereto constitute a part of the proposed contract; the quantity and description of the supplies by item to be furnished; the time, place, and method of delivery; and the primary period of contract and extensions. Bids must be submitted in the form required by the invitations for the bids, so that the successful bid can be accepted on Standard Form 33 and a formal contract consummated thereby. The contract must incorporate all the covenants, terms, and conditions which are contemplated.

(d) *Base price vs. per-item basis.* The invitation will call for the furnishing of an approximate number of certificates of title, abstracts of title, or preliminary binders and title guarantee (insurance) policies, as the case may be, at a stated price per certificate of title, abstract, or preliminary binder and title guarantee (insurance) policy. If this basis of payment is not possible, payment for abstracts may be made on a per-item or per-page basis and certificates of title and interim binders and title guarantee (insurance) policies may be paid for in accordance with an established rate schedule based on the cost of the property. Where necessary, alterations in the payment paragraphs of the specifications may be made in order to comply with local practices, State statutes, or other special requirements.

(e) *Specifications.* The specifications for title service will follow ENG Form 1012 for abstracts, ENG Form 1016 for certificates of title and ENG Form 1014 for interim binders on owner's title guarantee (insurance) policies. Additional provisions may be added as circumstances require, but basic requirements will not be changed.

(f) *Several contracts for title evidence.* To meet the acquisition schedule, it may be necessary to enter into several contracts for title evidence to lands within a designated project area. In such cases, the portions of the projects to be covered by each contract will be defined according to established political subdivisions, such as districts, townships, counties, or any specified part thereof.

§ 644.64 Award of contracts.

(a) *Contract awards.* Contract awards will be made only by duly qualified contracting officers in accordance with applicable procurement regulations.

(b) *Review of title evidence contracts.* The Contracting Officer, if an employee of the Real Estate Division, or otherwise the Real Estate representative designated by the Division or District Engineer, will review contracts for title evidence. If this review is made by a Real Estate employee other than a Contracting Officer, he will advise the Contracting Officer relative thereto. The Contracting Officer or the Real Estate representative will ascertain that the Department of Justice has approved the bidder, and the contract will not be awarded to any bidder not so approved. The Contracting Officer or the Real Estate representative who is to advise him, will familiarize himself with ''Standards for the Preparation of Title Evidence in Land Acquisitions by the United States,'' issued by the Department of Justice, 1970.

(c) *Distribution.* Upon acceptance, copies of title evidence contracts will be distributed in the same manner as other contracts.

§ 644.65 Ordering title evidence.

(a) *Placing orders.* Where the contract does not specify the order in which title evidence for particular tracts will be furnished, orders will be submitted to the abstractor or title company on ENG Form 1011, Order for Title Evidence. An accurate legal description of the tract of land involved will be attached to the order or will be typed thereon.

(b) *Orders based on contiguous areas.* If the contract does not contain a list of tracts for which title evidence is to be furnished, orders will be based on contiguous areas of land in identical ownership and will be deemed to be contiguous even though crossed by roads, railroads, rights-of-way, or streams. In such event the variation in quantity shall not exceed plus or minus ten percent as prescribed by ASPR. If there has been a severance of surface and subsurface estates, determination of