

New Jersey Department of Transportation  
**QUALITY IMPROVEMENT ADVISORY**

**QUALITY MANAGEMENT SERVICES**

Manager: **Brian Strizki**

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QIA No. QIA006R

Approved : **Brian Strizki**  
Date: **April 7, 1997**

**Process Affected:**

Scope     Design     Right of Way     Utilities     Environmental     Historic     Construction

**Bureaus Affected:** All CPM Units

**Procedure(s) Affected:** All procedures connected with the Capital Program delivery.

**Route & Section:** Lackawanna Avenue  
BRZ-STP-8143 (103)

**County/Municipality:** Passaic County, City of Patterson

**Project Summary:** This project is currently under construction and involves the reconstruction of 1.136 miles of secondary road from MP 0.86 to 2.02. The project extends from Union Boulevard to Bromertown Road, Boroughs of Totowa and West Patterson. There are two bridges that are within the project limits and will be replaced.

**Nature of Problem(s):**

The Lackawanna Avenue project was awarded for construction in late 1994. The completion date was scheduled for January 15, 1997. At the time of award, the right of way was not totally acquired and an availability letter was prepared that estimated the availability of all ROW required. The contractor prepared staging plans based upon the projected ROW availability and began to work. Progress continued obtaining the necessary ROW. In 1995, it became evident that the necessary ROW would not be available and this required the contractor to alter the staging plans. The re-staging of the project added to the delays caused by ROW due to problems relocating the utilities. Further attempts to recover the schedule were hindered by the continuous delays in utility relocation. This added to the delay caused by the lack of ROW availability.

In January 1997 the NJDOT Change Control Board approved a Construction Change Proposal for this project that extended the completion date to August 15, 1997. In addition, a change order for an additional \$1,167,887.00 was approved to cover the additional costs incurred by the contractor due to the unavailability of the ROW and the problems with utility relocation.

In January 1997 the NJDOT was informed by the FHWA that the DOT would be held responsible for costs of \$1,000 per day due to the inability of the contractor to meet the completion date. Since the delay was due to the NJDOT, the FHWA would not reimburse the Department for CE costs incurred during the extended construction. Since the project is anticipated to run an additional 212 days, an additional \$212,000 was added to the cost of construction.

**Recommendation(s):**

As of January 1, 1997, the FHWA will *more strictly enforce the current regulations as outlined in the Federal Register pertaining to authorization to advertise projects with respect to right of way acquisition. Particularly, authorization to advertise federally funded projects that do not have all ROW acquired will normally not be issued.* What this means is that all parcels that are acquired by agreement must have transferred title and the owners must have been relocated (if applicable). If the parcels are being acquired through condemnation, *and are occupied either residentially or commercially*, the court must have appointed commissioners for the commission hearing. *In the case of vacant land being acquired through condemnation, the State must have deposited the money with the Court. The use of Right of Entry Permits in lieu of actual physical possession will normally not be a valid option.* (This includes any early vacation clauses used in agreement forms.) Though still allowed to be used for negotiation purposes, these Rights of Entry and early vacation clauses cannot *routinely* be used as proof of possession. *In exceptional cases, authorization to advertise may be granted in accordance with the provisions outlined in 23 CFR 635.309 (c) (2) & (3). These paragraphs outline the provisions which permit advertisement when the acquisition of right of way is not complete. However, it must be recognized that these provisions apply only in extreme instances or very unusual circumstances and are the exception rather than the rule.*

*Enforcement of this regulation* will mean that the problem of construction delays such as encountered on Lackawanna

Avenue should not occur again. However, the regulation may have serious ramifications on the Project Delivery schedule. **Therefore, Project Managers are advised not to attempt to advertise Federal projects without complete acquisition of all ROW *unless prior arrangements have been made with the FHWA*. Also, any project schedules that may need adjustment in order to compensate for the ROW acquisition time should be adjusted now.** Though at present, 100% State projects do not need to adhere to the *requirements* established by the FHWA, the intent is for the Department to uniformly apply the FHWA *requirements* to all projects.

The non-reimbursement for CE costs by the FHWA has occurred on other projects where the delay is caused by an NJDOT problem. This is an additional cost to the project when delays are a result of ROW or other DOT related problems.

**Implementation:**

Effective immediately.

**Impact Assessment:**

Schedule    Quality    Cost    Scope

**Cost Impact:**

\$1,379,887.00