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MANUAL 900-1

SECTION 02.12

ACQUISITIONS

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BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

## **1. Purpose**

The New York State Canal Corporation (Corporation) recognizes that, from time to time, it will be necessary to acquire real property interests (e.g., fee interests, easements, etc.) for Corporation purposes. This procedure outlines the method by which the Corporation will take title to real property identified by the Corporation as necessary for Corporation purposes.

## **2. Applicable Law and/or Guidance**

New York State Canal Law, Article 5

New York State Eminent Domain Procedure Law

New York State Finance Law §139-j, §139-k

New York State Public Authorities Law §358, §358-a, §382

Canal Real Property Management Policy (25-6-01C)

Executive Instruction entitled Inappropriate Lobbying Influence In Authority/Corporation Procurements

## **3. Introduction**

The Corporation is responsible for the maintenance, operation, construction, reconstruction, improvement, development, financing and promotion of the Canal System and for implementation of the New York State Canal Recreationway Plan (CRP). The Corporation may acquire real property for its corporate purposes, such as:

- Improvements to the Canal System, including the Canalway trail;
- Maintenance and control of the Canal System; and
- Repair of the Canal System.

Acquisitions involving real property shall be done as promptly as possible. Unless otherwise authorized by the Board, all acquisitions shall be completed within one year of Board authorization.

The Board shall approve all acquisitions of real property under the Corporation's jurisdiction, except as otherwise delegated. Under the contracts program, the Chief Engineer can acquire real property up to a value of \$150,000 without Board approval in accordance with Corporation Policy. The contracts program requirements and procedures are not included in this SOP.

Acquisitions may need to be resubmitted to the Board in the following circumstances:

- If the circumstances change following Board action and the approved terms and conditions cannot be followed, the proposed acquisition must be resubmitted to the Board for reconsideration.
- If the background information about the acquisition presented to the Board changes in any material way, the Executive Director, in consultation with the Contracting Officer, will determine whether the item should be resubmitted to the Board.
- If a Board approved acquisition cannot be progressed, a report must be provided to the Board detailing the reasons that the item is not being progressed. In limited circumstances as determined by the Executive Director, in consultation with the Contracting Officer, an item may be submitted to the Board withdrawing the prior authorization.

#### **4. Procedure**

Real property may be acquired in fee by deed via a negotiation or a competitive process, or by exercise of the power of eminent domain, or through an easement or lease. If a determination is made to acquire the real property via eminent domain, the Eminent Domain Procedure Law (EDPL) will need to be followed. The steps outlined below in this SOP are geared to an acquisition via deed. Some of the additional considerations that apply in an eminent domain proceeding are noted, but the information below is not comprehensive and the EDPL should be consulted. In the event of any inconsistency between the steps set forth below and the EDPL, the latter will prevail. Also, if the Corporation elects to acquire property through eminent domain, it may ask the New York State Department of Transportation (DOT) to assist with the acquisition, in which event coordination with DOT will be necessary, and should be initiated as soon as practicable.

#### 4.1. Review of the Proposed Acquisition

Upon determination by the Corporation that an acquisition is needed, the review process will begin.

- 4.1.1. For acquisitions involving a property value of greater than \$15,000, the Lobbying Law applies. See Executive Instruction entitled INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS for requirements.
  - 4.1.1.1. For negotiated acquisitions, OLM will notify the owner who the official contacts are and that the “restricted period” will commence.
  - 4.1.1.2. For a competitive process, the “restricted period” will begin with the request for proposal (RFP). The official contact during the procurement process will be identified in the RFP.
- 4.1.2. Where a survey and appraisal are required, OLM will follow SOP- APPRAISALS AND SURVEYS (900-1-02.4). In most cases, the survey would be completed prior to the appraisal.

**Note:** If a decision is made to proceed via eminent domain, the EDPL contains provisions that have a bearing on value and appraisals, and it, too, will need to be consulted and followed.
- 4.1.3. OLM will coordinate with Division personnel to conduct any necessary site visits.
- 4.1.4. OLM will coordinate retaining consultants to prepare environmental investigations, including a due diligence Phase I assessment and Phase II studies, and any State Environmental Quality Review Act (SEQRA) reviews required. Procurement procedures for the purchase of services will be followed for retaining consultant services.
- 4.1.5. OLM will provide the Canal Real Property Management Committee (CRPMC) with the complete proposed acquisition package. The CRPMC will review the proposed transaction. OLM will incorporate any modifications or conditions recommended by the CRPMC. If the CRPMC rejects the proposed acquisition, OLM will notify the Division Canal Engineer (DCE) and owner for a negotiated sale, and the procedure will stop here.

- 4.1.6. The Director of Canals, or the Contracting Officer, will keep the Board apprised of the proposed acquisition.
- 4.1.7. If a competitive process is required for the acquisition by an RFP process, follow procurement policies and procedures.
- 4.1.8. Following a competitive process or negotiated acquisition, the Director of Canals, assisted by OLM, will prepare a Board Agenda Item to place the proposed acquisition on the agenda of the Board.
- 4.1.9. The Director of Canals will provide the Board with a brief overview of the process of review, including any recommendations from Division or others, the result of any competition, and responsibility determinations where required.
- 4.1.10. The Board will approve or reject the transaction.
- 4.1.11. OLM will notify the owner, DCE, and applicable personnel of the Board's approval or rejection.

#### **4.2. Executing the Acquisition**

- 4.2.1. OLM will coordinate the preparation of the complete acquisition package and forward it to the Legal Department. For acquisitions via deed or easements, the Legal Department will prepare the purchase agreement or easement and other applicable documents for the acquisition of the property and coordinate review of title with the Attorney General's Office.
- 4.2.2. For eminent domain acquisitions, the EDPL will need to be followed, and if DOT is assisting in the acquisition, negotiations with the owner will be carried out by DOT. The Legal Department will coordinate all eminent domain acquisitions. For eminent domain proceedings, title will be acquired through a "taking map," and the Legal Department will work with the Attorney General's Office on reviewing title. The Legal Department will also work with OLM, the Attorney General's Office and DOT on finalizing documents that must be executed in connection with the eminent domain proceeding.

- 4.2.3. OLM will send the purchase agreement or easement to the owner. For acquisitions of property or interests therein where the total payment exceeds \$15,000, OLM will inform the owner that the purchase agreement or easement is not final until approved by the Attorney General's Office and the Office of the State Comptroller. The letter will direct the owner to sign the purchase agreement or easement and return it to the Corporation.
- 4.2.4. Upon receipt of the signed purchase agreement or easement, OLM will forward it to the Legal Department, Contracting Officer and Executive Director for signatures.
- 4.2.5. For acquisitions where the property value is over \$15,000, the Legal Department will prepare a package for submittal to the Attorney General's Office for approval as to form.
- 4.2.6. Upon approval by the Attorney General's Office, OLM will forward the package to the Office of the State Comptroller following SOP-SUBMITTALS TO THE OFFICES OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER (900-1-02.5).
- 4.2.7. If rejected by the Attorney General or State Comptroller, OLM will notify the owner and the DCE. For deed acquisitions, upon approval by the State Comptroller, OLM will notify the Legal Department and the Legal Department will coordinate the closing.
- 4.2.8. OLM will forward a copy of the executed purchase agreement or easement to the Credit and Collections Unit, Legal Department and DCE. OLM will maintain the original document in the Project Record.

## **5. Complying with §139-j and §139-k of the State Finance Law (Lobbying Law)**

Any contact (inquiry, etc.) made regarding a real property transaction following approval for negotiated acquisitions and subsequent to the first notice of a competitive process for acquisition of such real property (solicitation, RFP, etc.) is subject to the Lobbying Law and must be recorded. See the Executive Instruction entitled INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS.

## **6. Responsibilities**

The Board will authorize acquisitions of real property, except those authorized under the Contracts Program.

The CRPMC will review proposed acquisitions and make recommendations, approve or reject the transaction.

The Contracting Officer is responsible for compliance with and enforcement of Corporation policies as it applies to acquisitions. The Contracting Officer, Legal Department, and the Executive Director will sign purchase agreements and easements on behalf of the Corporation.

The Director of Canals will present the proposed acquisition transaction to the Board for authorization or rejection and keep the Board apprised of the progress of the acquisition.

The Executive Director, Contracting Officer, and Legal Department will sign purchase agreements and easements on behalf of the Corporation.

The Legal Department will prepare the purchase agreement or easement; coordinate reviews by the Attorney General's Office; oversee closings, sign purchase agreements and easements on behalf of the Corporation, along with the Contracting Officer and Executive Director; and coordinate eminent domain proceedings.

OLM will coordinate the purchase approval process including contacts with the owner and preparation of submittals to the Office of the State Comptroller.

7. Flowchart

