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MANUAL 500-2

SECTION 02.9

ACQUISITIONS

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BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

1. Purpose

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

2. Applicable Law and/or Guidance

New York State Public Authorities Law, Article 2, Title 9, New York State Thruway Authority, Article 9, Title 5-A

New York State Eminent Domain Procedure Law (EDPL)

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

Thruway Real Property Management Policy (25-6-02)

Executive Instruction entitled Inappropriate Lobbying Influence In Authority/Corporation Procurements

3. Introduction

The Authority is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In accordance with the provisions of Title 9 of the Public Authorities Law, the Authority has the power to acquire and hold and dispose of real property not necessary for its corporate purposes or whenever the Authority Board shall determine that it is in the interest of the Authority and thus, the interest of the State. The Authority may acquire real property necessary for the construction, improvement, and operation of the Thruway System through eminent domain, fee by deed or through acquisition of a partial interest in the real property such as through an easement.

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 Authority's jurisdiction, except as otherwise delegated (e.g., under the Contracts Program).

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. Typically, the Authority will ask the New York State Department of Transportation (DOT) to assist with the acquisition of real property using eminent domain, in which event coordination with DOT will be necessary, and should be initiated as soon as practicable. Acquisitions under the delegated Contracts Program are not included in this procedure.

4.1. Review of the Proposed Acquisition

- 4.1.1. The Chief Engineer will determine that an acquisition is necessary for Thruway engineering, maintenance, and/or operations; or the Director of Administrative Services, to meet administrative space needs. The Chief Engineer or Director of Administrative Services will notify the Bureau of Real Property Management (BRPM) to coordinate the acquisition process.
- 4.1.2. For leases and acquisitions not done through eminent domain or intergovernmental transfers, 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.
 - 4.1.2.1. For negotiated acquisitions, the BRPM will notify the owner who the official contacts are and that the “restricted period” will commence.
 - 4.1.2.2. 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.

- 4.1.3. If a competitive process is required for the acquisition by an RFP process, BRPM or DOT will coordinate the process following procurement policies and procedures. For negotiated acquisitions, BRPM or DOT will coordinate the negotiations.
- 4.1.4. BRPM will coordinate with Division personnel to conduct any necessary site visits.
- 4.1.5. BRPM will initiate the State Environmental Quality Review Act (SEQRA) reviews required following SOP-STATE ENVIRONMENTAL QUALITY REVIEW ACT (500-2-02.4).
- 4.1.6. Where a survey and appraisal are required, BRPM will follow SOP-APPRAISALS AND SURVEYS (500-2-02.2). For transactions involving the acquisition of real property by DOT the following additional steps will be taken:
 - 4.1.6.1. The Authority's Engineering Real Property Unit (ERPU) will coordinate the survey process with DOT's Regional Right-of-Way Unit.
 - 4.1.6.2. Upon receipt of the preliminary survey map, BRPM will forward a copy to the DOT regional real estate office and request that DOT carry out the acquisition for and on behalf of the Authority.
 - 4.1.6.3. Upon receipt of the final survey map, BRPM will forward the survey map to the DOT regional real estate office and request that it initiate the appraisal process in accordance with DOT policies and procedures.

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 also will need to be consulted and followed.
 - 4.1.6.4. BRPM will confirm that the appraisal cost estimate is within the Authority's budget or request a budget revision, if necessary.
- 4.1.7. BRPM will keep the Contracting Officer apprised of the acquisition. The Contracting Officer will keep the Board apprised.

- 4.1.8. BRPM will provide the Thruway Real Property Management Committee (TRPMC) with the complete proposed acquisition package. The TRPMC will review the proposed transaction. BRPM will incorporate any modifications or conditions recommended by the TRPMC. If the TRPMC rejects the proposed acquisition, BRPM will notify DOT (where applicable), and the real property owner, and the procedure will stop here.
- 4.1.9. Following a competitive process or negotiated acquisition, the Contracting Officer, assisted by BRPM, will prepare a Board Agenda Item to place the proposed acquisition on the agenda of the Board.
- 4.1.10. The Contracting Officer will provide the Board with a brief overview of the process of review, including any recommendations from Division, DOT, or others, the result of any competition, and responsibility determinations where required.
- 4.1.11. The Board will authorize or reject the transaction. BRPM will notify the owner, the Division Director (DD) and/or DOT (where applicable) and applicable personnel of the Board's approval or rejection. If rejected, the procedure will stop here.

4.2. Executing the Acquisition

- 4.2.1. Acquisitions of real property other than leases will be handled through DOT using the following steps:
 - 4.2.1.1. DOT will coordinate the preparation of acquisition documents, signatures and all submittals to the Offices of the State Comptroller (OSC) and Attorney General (OAG). If OSC and/or OAG rejects the proposed transaction, DOT will notify BRPM. BRPM will notify the Contracting Officer, owner of the property and other applicable Authority personnel. The procedure will stop here.
 - 4.2.1.2. DOT will coordinate filing of the acquisition map and forward BRPM two copies of the recorded notice of appropriation with filing data. BRPM will keep one copy of the notice in the Transaction Record and forward one copy to the ERPU to enter the acquisition into the Authority's geographic information system.

- 4.2.1.3. DOT will notify OSC to pay the acquisition amount and copy BRPM on the notice. BRPM will notify Accounts Payable and request a copy of the OSC check warrant for the Transaction Record.
- 4.2.2. For lease acquisitions handled by the Authority the following steps would be taken:
 - 4.2.2.1. The Bureau of Management Analysis and Projects (BMAP) will coordinate the preparation of the complete lease package and forward it to the Legal Department.
 - 4.2.2.2. BMAP will send the lease agreement to the lessor. For leases where the total contract payment exceeds \$15,000, BMAP will inform the lessor that the lease agreement is not final until approved by OSC and OAG. The letter will direct the lessor to sign the lease and return it to the Authority.
 - 4.2.2.3. Upon receipt of the signed lease, BMAP will forward it to the Legal Department, Contracting Officer, Chief Financial Officer, and Executive Director for signatures.
 - 4.2.2.4. For leases where the total contract payment is over \$15,000, the Legal Department will prepare a package for submittal to the OAG for approval as to form.
 - 4.2.2.5. If rejected by the OAG, Legal will work with BMAP to revise as necessary and resubmit to the OAG.
 - 4.2.2.6. Upon approval by the OAG, BMAP will forward the package to the OSC following SOP-SUBMITTALS TO THE OFFICES OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER (500-2-02.3).
 - 4.2.2.7. If rejected by the OAG or OSC, BMAP will notify the lessor, the Legal Department, and other Authority personnel as applicable.
 - 4.2.2.8. BMAP will forward a copy of the executed lease to Accounts Payable, the Legal Department, and other Authority personnel as applicable. BMAP will maintain the original document in the Transaction 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 that are not otherwise delegated.

BMAP will coordinate lease acquisitions for the Authority.

BRPM will coordinate the acquisition process for the Authority including coordination with DOT as applicable.

The Contracting Officer is responsible for compliance with and enforcement of Authority policies as it applies to acquisitions. The Contracting Officer will present the proposed acquisition to the Board for authorization or rejection and keep the Board apprised of the progress of the acquisition. The Contracting Officer, Legal Department, Chief Financial Officer, and the Executive Director will sign acquisitions on behalf of the Authority.

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

7. Flowchart

