

CHAPTER 7

REAL PROPERTY ACQUISITIONS

All acquisitions of real property, regardless of the cost, are defined as permanent improvements. As such, all acquisitions must be reviewed by the Joint Bond Review Committee (JBRC) or JBRC staff under Code Section 2-47-50 and approved by the Budget and Control Board under Code Section 1-11-65. Acquisitions of real property can be classified into one of three categories: 1) purchases, 2) donations, or 3) property exchanges. Each category is discussed below.

Purchases

Under Code Section 2-47-50, the Budget and Control Board must formally establish a permanent improvement project before any actions are taken or any funds are spent toward the project purpose. Therefore, the agency must first establish a permanent improvement project, called a preliminary land acquisition, by submitting an A-1 form to the Capital Budgeting Unit. An A-49 form and a Request to Acquire Real Property form (see Appendix C) should always accompany this A-1 form.

The preliminary land acquisition authorizes the agency to spend up to \$20,000 to cover the cost of appraisals, environmental studies, building condition assessments, land surveying services and any other investigative studies required to adequately evaluate the property prior to purchase. Earnest money needed to bind a contract for the purchase of real property may also be expended from the approved preliminary amount. These expenditures can be made as a preliminary land acquisition provided the required studies and earnest money are secured in an amount not to exceed \$20,000. Any earnest money used to secure a contract for the purchase of real property must be refunded to the State if the Budget and Control Board does not approve the purchase and must be applied to the purchase price if the purchase is completed.

The Capital Budgeting Unit is authorized to establish preliminary land acquisition projects for acquisitions that do not exceed a total project cost of \$250,000 without further approval. If the cost of the preliminary studies is expected to exceed \$20,000, or the total project cost is expected to exceed \$250,000, Joint Bond Review Committee staff or Joint Bond Review Committee and Budget and Control Board approval are required, depending on the amount requested. No authority is given by approval of the preliminary land acquisition to acquire any land and/or building until an A-1 form which fully details the project and includes the information noted below has been reviewed by the Joint Bond Review Committee (JBRC), or its staff if the proposed acquisition cost is not expected to exceed \$250,000, and approved by the Budget and Control Board.

Appraisal, Environmental Study and Building Condition Assessment Required

At a minimum, all property purchases require an appraisal and a Phase I environmental study to be conducted on the subject property prior to review and approval by JBRC, or JBRC staff, and the Board. If the acquisition includes a building(s) that is intended to be occupied by state employees or the public, a Phase I building condition assessment will also be required.

The appraisal must be made by a State Certified Appraiser, although an MAI appraiser is preferred. Appraisal services are exempted from the requirements of the Consolidated Procurement

Code. Therefore, the agency may select the state-certified or MAI appraiser of its choice. The appraiser should have prior experience and expertise in appraising the type of property under consideration. The appraisal must also conform to the “Uniform Standard of Professional Appraisal Practices,” and only an original of the report should be sent to the Capital Budgeting Unit for review. Copies of appraisals are not acceptable for the purposes of review by Capital Budgeting. The appraisal report should be no more than one year old when submitted for review. If the appraisal is more than a year old, an update of the appraisal will be required to ensure the market value is current. Since several types of appraisal formats are used in the appraisal industry, you are encouraged to contact the Capital Budgeting Unit prior to ordering any appraisal to ensure that the appraisal will be adequate to support your proposed acquisition. In most cases, a complete self-contained appraisal will be required.

The Phase I environmental study should be conducted by a consultant who has been approved by the Budget and Control Board’s Office of State Engineer. A listing of approved environmental consultants is available from that office and on their web page. The agency must also obtain approval from and coordinate through the Office of State Engineer to contract for environmental services related to real property acquisitions under the State Engineer’s small A&E contract procedure. The Phase I environmental study must conform to the requirements of the Budget and Control Board guidelines for such studies (see Appendix D). If the property under consideration contains any buildings, an asbestos survey of the buildings complete with an estimated abatement cost must also be furnished to Capital Budgeting for review and approval.

The Phase I building condition assessment will be required for acquisition of property that is intended to be occupied by state employees or the public. The assessment should be conducted by a firm qualified by the Office of State Engineer. A listing of approved firms is available from that office and on their web page. The building condition assessment must conform to guidelines adopted by the Budget and Control Board for such studies (see Appendix E). When the building condition assessment is sent to Capital Budgeting, it will then be forwarded to the Office of State Engineer which will review the report and make a recommendation that will be submitted, along with other acquisition information, to JBRC and the Board.

Upon completion, the agency should send the original appraisal, environmental studies, building condition assessment, and any other investigative reports to the Capital Budgeting Unit for review. If the reports comply with the appropriate standards and guidelines, the Capital Budgeting staff will notify the agency that the reports have been approved. The Capital Budgeting Unit may also request that additional information be supplied to support these reports and assist in approving the reports for use in the purchase request. If the environmental firm conducting the Phase I recommends a Phase II environmental study, the Phase II study will also be required. In some instances, Capital Budgeting may request a letter from the Department of Health and Environmental Control verifying the conclusions of the environmental study. If so, the agency is responsible for obtaining the letter. After all investigative reports have been reviewed and approved by Capital Budgeting, the agency may negotiate the purchase price with the seller for not more than the appraised value of the property.

Information Required for JBRC and Board Approval

After the purchase price has been agreed upon, the agency must get all necessary approvals before the purchase can be closed. These include approvals required by some state statutes for acquisition of property based on the agency involved or the source of funds being used, approval by the governing board of the agency, and approval by the Commission on Higher Education for all colleges, universities and technical colleges. These preliminary approvals must be obtained before the purchase

request is submitted to JBRC, or JBRC staff, and the Board for approval. The agency should certify to the Capital Budgeting Unit that the required preliminary approvals have been received.

Once all required preliminary approvals are received, the agency must submit an A-1 form for approval of the final land acquisition to the Capital Budgeting Unit. This A-1 form should also reflect an increase in the project budget for purchase of the property and all pertinent information about the purchase. The agency should make sure the A-1 is completed in its entirety. Along with the A-1, the agency must also provide a letter on agency letterhead requesting approval of the purchase by the Board and the additional information outlined in the Property Acquisition Information Format (see Appendix F). All of this information is required for the Capital Budgeting Unit to prepare the purchase request for submission to the Joint Bond Review Committee, or JBRC staff, and the Budget and Control Board for approval. Therefore, the agency is encouraged to be as thorough as possible in providing this information.

The following is a listing of all required information which the agency must submit and Capital Budgeting must have before a land/building purchase request can be submitted to JBRC, or JBRC staff, and the Board for approval:

- 1) Completed A-1 form for final land purchase and related budget increase.
- 2) Appraisal of the subject property, approved by the Capital Budgeting Unit.
- 3) Phase I environmental study of the subject property, approved by the Capital Budgeting Unit. This should include an asbestos survey and a building condition assessment if a building is included in the purchase.
- 4) Letter from the agency on agency letterhead requesting Board approval of the purchase.
- 5) Property Acquisition Information Format.
- 6) Certification of preliminary approvals, if applicable. This includes Commission on Higher Education approval for all colleges, universities and technical colleges.
- 7) Request to Acquire Real Property if not already submitted.

The Capital Budgeting Unit may also request additional information based on the specific nature of the project. That information must also be submitted for JBRC, or JBRC staff, and Board approval.

Approval by Joint Bond Review Committee and Budget and Control Board

The purchase request is submitted first to the Joint Bond Review Committee or JBRC staff for approval under the procedures outlined in Chapter 5. While the Capital Budgeting staff attends JBRC meetings to address any questions that may arise from its review standpoint, the agency is strongly encouraged to have a representative present at the JBRC meeting who can address specific questions about the agency and the purchase under review.

After the purchase request has been favorably reviewed by JBRC or JBRC staff, Capital Budgeting submits the item to the Budget and Control Board for approval, although frequently JBRC and Board approval are being requested simultaneously. The agency is strongly encouraged to have a representative present at both the JBRC meeting and the Budget and Control Board meeting who can address specific questions about the agency and the purchase request.

Upon approval of the purchase request by the Budget and Control Board, the Secretary to the Board issues a Certificate of Acceptance to the agency acknowledging the Board's approval. The Certificate of Acceptance is sent to the Capital Budgeting Unit, which forwards it and the approved A-1

form to the agency. The Certificate of Acceptance should be recorded simultaneously with the deed with the Register of Deeds or the County Clerk of Court, whichever is appropriate, under the requirements of Code Section 1-11-65.

Real Estate Closing

The agency is responsible for scheduling the real estate closing. This is usually done by selecting an outside legal counsel which must be approved by the Attorney General's Office. All appropriate document preparation, fund disbursements, and recordings are the responsibility of the counsel selected to close the transaction. After the deed is recorded, the agency should send a copy of the recorded deed, including the book and page number, to the Capital Budgeting Unit. This is to update the Budget and Control Board's land inventory records on all property owned by the State. The permanent improvement project for the purchase will not be closed out until a copy of the recorded deed is sent to Capital Budgeting, along with or prior to submitting an A-1 closing the project.

Donations

A donation of property is an acquisition in which the agency receives real property from another party without paying for the property. To receive a donation of property, substantially the same information is required and the same procedures apply as they do for purchases. The only exception is that, in most cases, the agency will not be required to secure an appraisal of the property. An appraisal may be required, however, if the environmental study indicates the presence of environmental hazards or if a building condition assessment indicates the need to compare the relative value of the building against the cost to remedy code or other issues to occupy the building. This is determined on a case by case basis. The agency must still establish a preliminary land acquisition permanent improvement project for up to \$20,000 to procure an environmental study and building condition assessment, if needed, on the property and related investigative studies. All requirements relating to the environmental study and building condition assessment apply for land donations as well as purchases.

Procedurally, real property donations follow the same procedures as required for property purchases. This includes negotiating the terms of the donation with the donor, which should not be done until after the environmental study, building condition assessment and any other investigative reports have been reviewed and approved by Capital Budgeting. The following is a listing of all required information which the agency must submit and Capital Budgeting must have before a property donation request is submitted to JBRC, or JBRC staff, and the Board for approval:

- 1) Completed A-1 form for the land donation.
- 2) Phase I environmental study approved by the Capital Budgeting Unit. This should include an asbestos survey and a building condition assessment if a building is included in the donation.
- 3) Letter from the agency on agency letterhead requesting Board approval of the donation.
- 4) Property Acquisition Information Format.
- 5) Certification of preliminary approvals, if necessary. This includes Commission on Higher Education approval for all colleges, universities and technical colleges.
- 6) Request to Acquire Real Property if not already submitted.

The approvals and closing procedures for a donation are the same as those followed for purchases. Please refer to the previous section and to Chapter 5 for detailed discussion.

Exchanges

A real property exchange occurs when an agency exchanges a piece of property already owned for a piece of property owned by another party. To exchange real property, substantially the same information is required and the same procedures apply as they do for purchases. However, real property exchanges must be made on a value for value basis. Therefore, all properties involved in an exchange must be appraised. The property or properties the agency is receiving must have a Phase I environmental study, but a Phase I study is not required for the property being exchanged. If a building is being acquired in the exchange, a Phase I building condition assessment will be required for the property the agency is receiving, but is not required for the property being exchanged. The agency must still establish a preliminary land acquisition permanent improvement project for up to \$20,000 or more, if needed, to procure the required investigative studies.

Procedurally, real property exchanges follow the same procedures as required for property purchases. This includes negotiating the terms of the exchange, which should not be done until the appraisals, environmental study and building condition assessment, if needed, have been reviewed and approved by Capital Budgeting. The following is a listing of all required information which the agency must submit and Capital Budgeting must have before a property exchange request is submitted to JBRC, or JBRC staff, and the Board for approval:

- 1) Completed A-1 form for the property exchange. This might include a budget increase if the property the agency is receiving has a higher value than the property it is exchanging, requiring the agency to pay for a portion of the property it receives.
- 2) Appraisals of all properties involved, approved by the Capital Budgeting Unit.
- 3) Phase I environmental study on the property the agency will receive, approved by the Capital Budgeting Unit. This should include an asbestos survey and building condition assessment if a building is included in the exchange.
- 4) Letter from the agency on agency letterhead requesting Board approval for the exchange.
- 5) Property Acquisition Information Format.
- 6) Certification of preliminary approvals, if necessary. This includes Commission on Higher Education approval for all colleges, universities and technical colleges.
- 7) Request to Acquire Real Property if not already submitted.

Because property exchanges involve the conveyance of property as consideration for property received, the Budget and Control Board's General Services Division should also be contacted for any other requirements that may be needed for Budget and Control Board approval of the conveyance.

The approvals and closing procedures for an exchange are the same as those followed for a purchase. Please refer to the section on purchases and to Chapter 5 for detailed discussion.

