

ALBANY CONVENTION CENTER AUTHORITY
REAL PROPERTY ACQUISITION POLICY

I. INTRODUCTION

Pursuant to Title 28-BB of Article 8 of the Public Authorities Law, the Albany Convention Center Authority (“ACCA”) is responsible for the siting, financing, construction, administration, and management of a convention center facility in downtown Albany. In furtherance of these responsibilities, the ACCA has the power to acquire, including by lease, purchase and/or condemnation, real property within the City of Albany necessary, desirable or convenient for its purposes. This policy shall apply to any acquisitions of real property by ACCA.

II. GENERAL

A. All acquisitions shall comply with applicable State, federal and local law, including but not limited to Title 28-BB of Article 8 of the Public Authorities Law, Chapter 766 of the Laws of New York 2005, better known as the Public Authorities Accountability Act (“PAAA”), Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, better known as the Procurement Lobbying Reform Act, SEQRA, the Eminent Domain Procedure Law (“EDPL”), any requirements of the ACCA’s bond resolutions, and other applicable state and local laws, rules, regulations, policies, procedures and executive orders.

B. The Executive Director is hereby empowered to take all steps regarding the acquisition of real property necessary to accomplish the corporate purposes of ACCA and consistent with this policy. The Executive Director may secure real property via fee title, easement or lease, depending on the nature and duration of the interest sought, the current use of the parcel, the presence of improvements, encumbrances or encroachments, the current and proposed use of adjacent parcels, and other factors which in his judgment will further the corporate purposes of ACCA.

C. The acquisition vehicle to be used by the Executive Director is an option contract, which contract shall not be exercisable by ACCA until it has fulfilled its obligations pursuant to SEQRA with respect to the particular real property to be acquired and it has adopted the Preliminary Study. A form option contract shall be prepared and approved by the Board, which form option contract shall be used in negotiations (and upon approval, shall be attached hereto as Exhibit A). No substantive changes shall be permitted to the vehicle to be used or to the form option contract.

D. The ACCA hereby declares that it intends to acquire, to the extent reasonably practicable and consistent with the policy, through negotiation. The Executive Director shall not actually commence proceedings pursuant to EDPL Article 4 to acquire a particular real property interest unless the Executive Director has concluded in writing that acquisition of such real property by negotiation is not reasonably practicable or that it cannot be completed through negotiation consistent with this policy. The ACCA is not precluded, however, from making public purpose findings pursuant to Article 2 of the EDPL. The ACCA may also utilize a

negotiated or “friendly” condemnation. Compliance with EDPL Article 2 may, but need not, be coordinated with the ongoing completion of environmental review pursuant to SEQRA.

E. With respect to each acquisition, the Executive Director shall assure that one of the following criteria is met: (1) two (2) appraisals by Members of the Appraisal Institute (“MAI”) or other reasonable and professionally prepared valuation projections have been prepared for or on behalf of the ACCA consistent with then-current industry standards and practices concluding that the value of the real property is the same as the negotiated price; or (2) the contract for acquisition contains an express acknowledgement by the seller of the interest that the negotiated price is the true value, in seller’s judgment, of the interest to be acquired. Notwithstanding the preceding sentence, the ACCA may, but shall not be required to, agree to pay an amount in excess of the value projected in (1) above, provided that it concludes, taking into account the surrounding facts and circumstances, that the excess amount is warranted and reasonable. The appraisal firms shall be retained by the ACCA pursuant to the ACCA’s Procurement Policy. If the appraisals are materially different, the Executive Director and counsel will attempt to reconcile the differences or value through determining an average of the two appraisals, or seeking a third review appraisal which shall constitute the final determination of value. Any appraisal of the property shall disregard any increase or decrease in the fair market value of the real property reasonably attributable to the Project for which the property is to be acquired, or increase or decrease attributable to the likelihood that the property would be acquired for the project.

F. All transactions shall be consistent with the ACCA’s corporate purposes.

G. The ACCA shall create a clear and comprehensive record for each transaction that documents its compliance with this policy.

H. The ACCA shall maintain a system of inventory for all real property under its control.

III. IMPLEMENTATION PRACTICES

A. ACCA staff shall identify parcels in the “preferred site” area, with determination as to size and other particulars needed.

B. The ACCA shall procure outside professional services, including but not limited to title insurance and commercial real estate brokerage services by competitive solicitation pursuant to the ACCA’s Procurement Policy.

C. Once potentially acceptable parcels have been identified, those parcels shall be evaluated internally under the direction of the Executive Director of the ACCA, with participation from ACCA staff, real estate counsel, engineering, environmental, archeological, and other consultants, title insurance company and a licensed commercial real estate broker or brokers. Any evaluation of the affected parcel shall examine such issues as ownership; zoning; road access, including access to interstates; easements and other encumbrances; parcel history; recent sales history; proximity to environmentally compromised areas; potential government funding sources for parcel remediation or developments; market availability; recent appraisals; brokerage arrangements; existing tenants and the terms and conditions of their leases.

D. Following Board authorization to proceed, the Executive Director or the broker, subject to the overall direction and supervision of outside counsel, shall conduct negotiations with the property owner(s) or their representative consistent with this policy. The ACCA reserves the right to ask for a signed confidentiality agreement with any property owner in connection with negotiation of the option contract. The ACCA may also commence proceedings pursuant to Article 2 of the EDPL at any time.

E. All option contracts shall contain language granting ACCA and its representatives the right to enter onto the parcel site for the purposes of conducting archeological, environmental, geotechnical and any other relevant studies and inspections of the parcel site.

F. Publicly- and quasi-publicly-owned parcels shall be evaluated and acquired in accordance with the principles embodied in this section, subject to any applicable state and local laws governing disposition by the public or quasi-public entity. In the event that negotiations are not reasonably practicable or cannot result in a contract which conforms to this policy, the Authority reserves the right, subject to applicable laws and principles of law, to undertake condemnation of such parcels pursuant to the EDPL to the extent permitted by law.