

CHAPTER 5

Advance Optioning Procedures

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CHAPTER 5

ADVANCE OPTIONING PROCEDURES

1. PURPOSE AND SCOPE.

This Chapter establishes policies and procedures, assigns responsibilities and delegates authority relating to the acquisition of advance options.

2. REFERENCES.

- (a) Title 10 U.S.C. 2677
- (b) SECNAVINST 11011.47 of 20 Jun 83
- (c) P.L. 102-190 of 5 Dec 91
- (d) Deputy Secretary of Defense Memorandum of 13 Sep 1990

3. AUTHORITY.

a. Subsection (2) of reference (a) provides "The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department."

b. By reference (b) the Secretary of the Navy delegated the authority to acquire options on real property.

c. The authority cited above applies only to real estate which is "suitable and likely to be required" for construction projects where the land is needed for proposed construction and the siting for the proposed construction is firm. This authority does not apply to procurement of options in real estate expressly authorized for acquisition by law.

d. In accordance with reference (c), the EFD/EFA shall review the most recent inventory of real property assets published by the Resolution Trust Corporation (RTC) before acquiring an option on real property under subsection (a) of section 2677 of Title 10, United States Code."

4. APPROVAL AUTHORITY BY DEPUTY SECRETARY OF DEFENSE

Reference (d) established a moratorium on all major land acquisitions. Accordingly, no major land acquisition proposals may be made public through (1) a request for proposals; (2) a notice of intent to perform environmental analysis; or (3) other official notice without the approval of the Deputy Secretary of Defense. The memorandum defines a major land acquisition as the purchase, withdrawal from public domain, lease or permit from individuals or government entities, or any other type of use agreement involving more than 1,000 acres, or land whose estimated purchase price or annual lease price exceeds \$1 million. Renewal of existing withdrawals, leases, permits or other use agreements other than those at bases being closed or which are candidates for closure are not subject to the moratorium. EFDs/EFAs shall submit requests for exceptions to this moratorium for urgent military requirements or when, application of the moratorium would have an adverse effect on the Department's ability to perform its mission.

5.4. DETERMINATION BY THE ENGINEERING FIELD DIVISION (EFD).

EFDs may determine that particular parcels are "suitable and likely to be required" and that advance optioning is desirable and in the best interest of the Government. Factors the EFD shall consider and evaluate in making such determination shall include:

- a. The need for such land for proposed construction for which the siting is firm;
- b. Definite indications of price increases, enhancement of values and/or changes in use;
- c. The probability of private construction on the land;
- d. The likelihood that an option will be obtained at an acceptable price.

- ~~a. Provide the estimated cost of the property, including estimated costs of relocating roads, utilities, etc.,~~
- ~~b. Provide the estimated cost of the option, of appraisals, title evidence, surveys, and other similar items, and~~
- ~~c. Make firm recommendation for advance optioning, and provide a statement that funds are or will be made available by the Major Claimant to cover the cost of advance optioning.~~

~~6. ACTION BY THE COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND.
If the recommendation of the EFD is determined acceptable, and if necessary funds are available NAVFACENGCOM will provide a specific authorization to proceed with negotiations for the advance option(s).~~

7. ^{THE} PROCEDURES BY ENGINEERING FIELD DIVISION UPON RECEIPT OF APPROVAL AND FUNDS.

a. Obtain and review as necessary required title evidence and land appraisals. This will be done to confirm the identity of the parties in interest with whom negotiations will be conducted and to ascertain the precise limit of optioning authority in the case under provisions of reference (a).

b. Review the need for all land in identical ownership. This examination is to explore and consider the possibility that only part of the land under identical ownership may suffice for project purposes. In these cases the property may be appraised on the basis of this contingency and an attempt made to include in the option a provision giving the United States the privilege of exercising the option for all or only part of the land covered by the option. Such option will describe each parcel individually and will provide a separate purchase price for each, inclusive of severance damage, if any, as well as an agreed price for the entire ownership.

c. Determine the required term of option on the basis of the current status of the project, considering:

- (1) Status of required legislation
- (2) Apportionment of funds by the Bureau of the Budget
- (3) Clearance with Department of Defense
- (4) Submission of acquisition reports to Armed Services Committees of the Congress

~~(5) The allotment of funds and authorization by NAVFACENGCOM. A normal term will be 18 months, but may be 12 or 24 months; a longer term than 24 months may be obtained in unusual circumstances, but only upon specific prior approval by NAVFACENGCOM.~~

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d. Prepare an Option to Purchase Real Property, a sample of which is attached hereto as Appendix "A." The option will be prepared in sufficient quantity for distribution as hereinafter set forth and for execution in triplicate by all necessary vendors in such manner as will satisfy local legal and recording requirements. As necessary, additional pages may be added to and made part of the option to accommodate space requirements for execution and acknowledgement. Specific "Directions For Preparation" are contained in Appendix "C" to this Chapter.

e. Conduct negotiations for option in accordance with requirements of law, particularly Title III of Public Law 91-646, and as prescribed by regulations and procedures provided in Chapter 8 of this publication.

8. REVIEW BY ENGINEERING FIELD DIVISION.

Before requesting the issuance of a check in payment for the option, the EFD will carefully review the option to assure that it is correct and adequate and will also determine that:

a. When applicable, legislation authorizing acquisition of the land in the option has not been enacted;

b. The purchase price agreed upon and stated in the option is consistent with the appraised fair market value of the property;

c. There has been no change in the land requirements of the property to be obtained;

d. The amount to be paid for the option does not exceed twelve percent (12%) of the appraised fair market value of the property covered by the option; and,

e. Funds are available for payment of the consideration.

9. DISPOSITION OF OPTIONS.

Upon receipt of an acceptable option executed by all requisite parties, the EFD will complete all the review procedures specified above in paragraph 8, will assign an NF(R) number to the option, and will then make distribution as follows:

a. A signed copy to the vendor(s). This delivery will be either by registered mail, return receipt requested, or by personal delivery in exchange for a signed receipt for the EFD files;

b. The original to EFD files;

c. A signed copy to Navy Regional Finance Center, Washington, D.C.; and

d. A conformed copy to the local Navy Regional Finance Center delivered with the request for check for payment of the option amount. See paragraphs 6 and 7 of Chapter 7 of this publication for detailed procedures.

10. CLOSING OPTION TRANSACTION.

Delivery of the check for the option amount to the owners will not be made until the EFD has first assured the validity of the option, and recorded it in the appropriate land records in accordance with applicable closing procedures

prescribed in Chapter 11 of this publication. As a minimum such procedures will include an examination of the title records to assure that no adverse change in the title status has occurred since the date of the latest certification, and an inspection of the premises to assure that no adverse claimant is in possession. An Attorney's Report on Title and a Certificate of Inspection and Possession should be prepared and placed in the parcel record file.

11. POST-CLOSING PROCEDURES.

a. When an advance option has been obtained under authority of 10 U.S.C. 2677 before the preparation of the Planning Report for the particular project, the complete assembly of data and materials used in such optioning will be forwarded by the EFD to NAVFACENGCOM for use in justifying the land acquisition and for obtaining necessary approvals.

b. Where a Planning Report has been previously submitted, only the additional data used for the optioning need be submitted to NAVFACENGCOM.

12. EXERCISE OF OPTION.

a. Upon enactment of authorizing legislation, appropriation of funds and issuance of required approvals, NAVFACENGCOM will notify the EFD that he may proceed to exercise the option upon assignment of funds for acquisition.

b. The EFD will prepare a Notice of Exercise of Option to Purchase Real Property, a sample of which is attached hereto as Appendix "B", to exercise such option. The notice will bear the same NF(R) number as has been assigned to the option being exercised, and will be distributed in the same manner except that the original will be sent to the vendor and a signed copy will be retained by the EFD.

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APPENDIX "A"

PROJECT _____

TRACT NO. _____

CONTRACT NO. _____

VENDOR _____

OPTION TO PURCHASE REAL PROPERTY

In consideration of the sum of \$ _____ and other valuable considerations, to the undersigned Vendor in hand paid by the United States of America, the receipt and sufficiency of which are hereby acknowledged, the Vendor, who represents that he is the owner of the property hereinafter described, hereby, for himself and his heirs, executors, administrators, successors, and assigns, gives and grants unto the United States of America or its assigns the exclusive right and option to elect on or before _____ to purchase at and for the price of \$ _____, in accordance with the terms and conditions set forth below, that parcel of land, with the buildings and improvements thereon and all rights, hereditaments, easements, and appurtenances thereunto belonging, located in

_____ (District) (Lot) (Township)

County of _____, State of _____,

bounded and described as follows:

the Vendor to convey to the United States, as hereinafter provided, a valid, indefeasible fee simple title to said land, subject only to the following rights outstanding in third parties, namely:

and the following rights and interests to be reserved by the Vendor, namely:

The terms and conditions of this option are as follows:

- (1) The purchase price set forth above is payable as soon as the United States has exercised this option and has had a reasonable time within which to secure and examine the evidence of title to said land and to obtain the necessary approval of title; provided that the Vendor can execute and deliver to the United States a good and sufficient general warranty deed conveying said land, with the hereditaments, easements, and appurtenances thereunto belonging, to the United States of America in fee simple, free from all liens and encumbrances and shall quitclaim to the United States of America and its assigns all right, title, or interest which the Vendor may have in the banks, beds, and waters of any streams opposite to or fronting upon said land, and in any alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land, and in any means of ingress and egress appurtenant thereto, said conveyance to be subject only to such outstanding rights in third parties and reservations by the Vendor as may be set forth above; provided, however, that conveyance by states, municipal corporations, fiduciaries, and persons acting solely in a representative capacity need not contain general warranty covenants if otherwise acceptable and satisfactory to the United States.
- (2) It is the intention of the Vendor and he hereby agrees that this option may be exercised by the United States through any duly authorized representative, by delivering, mailing, or telegraphing notice thereof to the Vendor at the address stated below, on or before the date set forth below,
- (3) It is understood that the United States is to defray the expenses incident to the preparation of the deed to the United States and the abstract or certificate of title; provided, however, that the Vendor will deliver to the representatives of the United States any abstracts, certificates of title available or in his possession.
- (4) The Vendor agrees that all taxes, assessments, and encumbrances which are a lien against the land at the time of the conveyance to the United States shall be satisfied of record by the Vendor at or before the transfer of title and, if the Vendor fails to do so, the United States may pay any taxes, assessments, and encumbrances which are a lien against the land; that the amount of such payments shall be deducted from the purchase price of the land; at the request of the United States by its authorized representative and without prior payment or tender of the purchase price, he will execute and deliver the general warranty deed herein-

above provided for conveying to the United States the land herein described; that he will pay documentary revenue stamp taxes and obtain and record such other evidence of title as may be required by the United States; it being understood that the Government will pay the fee for recordation of the deed to the United States.

(5) The Vendor agrees that loss or damage to the property by fire or acts of God shall be at the risk of the Vendor until the title to the land and deed to the United States have been accepted by the United States through its duly authorized representative, or until the right of occupancy and use of the land, as hereinbelow provided for, has been exercised by the United States; and in the event that such loss or damage occurs, the United States may, without liability, refuse to accept conveyance of title, or it may elect to accept conveyance to title to such property, in which case there shall be an equitable adjustment of the purchase price.

(6) The Vendor agrees that the United States may, at its election, and notwithstanding the prior exercise of this option, acquire title to said land or any portion thereof or any interest therein by condemnation or other judicial proceedings, in which event the Vendor agrees to cooperate with the United States in the prosecution of such proceedings and also agrees that the consideration hereinabove stated shall be the full amount of the award of just compensation inclusive of interest for the taking of said land and that any and all awards of just compensation that may be made in the proceeding to any defendant shall be payable and deductible from the said amount that said consideration shall also be in full satisfaction of any and all claims of the Vendor for the payment of the right of occupancy and use hereinafter provided in Paragraph (7).

(7) As additional consideration for the payment of the purchase price hereinabove set forth, the Vendor hereby grants to the United States the right of immediate occupancy and use of the land hereinabove described for any purpose whatsoever from and after the exercise by the United States of this option until such time as said land is conveyed to the United States by the Vendor as hereinabove provided, and upon demand the Vendor will immediately vacate the property and deliver possession to the United States.

(8) It is agreed that the spouse, if any, of the Vendor by signing below agrees to join in any deed to the United States and to execute any instrument deemed necessary to convey to the United States any separate or community estate or interest in the contracted property to relinquish and release any dower, curtesy, homestead, or other rights or interest of such spouse therein.

(9) The above description of the real estate is subject to such modifications as may be necessary to conform to survey (if any) made by the agents of the United States.

(10) The Vendor represents and it is a condition of exercise of this option, that no Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to or share any part of this option, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to any contract if made with a corporation for its general benefit.

(11) Wherever the context thereof requires, the singular number as used herein shall be read as plural, and the masculine gender as feminine or neuter.

(12) It is agreed that, if the United States of America or its assigns shall fail to exercise this option on or before the date set forth above, the amount paid to the Vendor for this option privilege shall be forfeited to the Vendor.

(13) All terms and conditions with respect to this option are expressly contained herein and the Vendor agrees that no representative or agent of the United States has made any representation or promise with respect to this option not expressly contained herein.

NOTICE OF EXERCISE OF OPTION TO BE SENT, ON OR BEFORE THE DATE SET FORTH ABOVE TO:

_____ (Name) _____ (Address)

SIGNED, SEALED AND DELIVERED as of the _____ day of _____, 19____.

WITNESSES:

_____	Vendor	(SEAL)
_____	Spouse of Vendor	(SEAL)
_____	Vendor	(SEAL)
_____	Spouse of Vendor	(SEAL)
_____	Vendor	(SEAL)
_____	Spouse of Vendor	(SEAL)

(Space for acknowledgment, in the form in general use in the jurisdiction in which the land is located, to permit recordation)

APPENDIX "B"

PROJECT _____

TRACT NO. _____

CONTRACT NO. _____

NOTICE OF EXERCISE OF OPTION TO PURCHASE REAL PROPERTY

(Date)

TO: _____
(Name)

(Address)

In accordance with the terms of an Option to Purchase Real Property executed as of the _____ day of _____, 19_____, which options bears the Project Name, Tract Number, and Contract Number set forth above, notice is hereby given that the United States of America hereby exercises and accepts said option.

Contracting Officer for the
United States of America

APPENDIX "C"

Instructions for Use of Option to Purchase Real Property

(1) Insert amount to be paid for the option privilege. In accordance with 10 U.S.C. 2677(b), payments will be based upon appraised fair market value of the real property involved and the length of time option privilege is desired, and shall not exceed five per centum (5%) per annum of the appraised fair market value.

(2) Since this document will normally be used to option real property the acquisition of which has not yet been authorized by law, the date to be inserted in this blank should be far enough in advance to permit the insertion of a land acquisition line item in the next available budget, enactment of legislation, apportionment of funds by the Bureau of the Budget, clearance with the Department of Defense and the Committees on Armed Services of the Congress, issuance of a Real Estate Directive, and allotment of funds to the contracting officer.

(3) The purchase price to be inserted will be the price agreed upon during negotiations with the landowner, and the amounts paid for option privileges shall not be deducted therefrom. Negotiations for this "Option to Purchase" will be conducted in accordance with established procedure for negotiating a "Contract to Purchase".