

BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION

PROPERTY DISPOSITION GUIDELINES

1. INTENT.

These Guidelines detail the Corporation's operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property and to designate a Contracting Officer with responsibility for compliance with, and enforcement of, this policy and procedure. These Guidelines are intended to be consistent with and shall be construed in accordance with the New York Public Authorities Law ("PAL") and Article 16 of the New York Not-For-Profit Corporation Law ("NFPCL"). The Corporation shall dispose of its property in accordance with this policy and procedure, the PAL and the NFPCL.

Property for purposes of these Guidelines shall mean personal property in excess of five thousand dollars (\$5,000) in value, real property, and any inchoate or other interest in such property, to the extent that such interest may be conveyed to another person for any purpose, excluding an interest securing a loan or other financial obligation of another party ("Property").

2. DUTIES OF CONTRACTING OFFICER.

Except as otherwise provided herein and in the PAL, the Contracting Officer shall be responsible for the disposition of Corporation owned Property and be responsible for the Corporation's compliance with, and enforcement of these Guidelines. The Contracting Officer shall also be responsible for the disposition of property not covered by these guidelines, such as scrap and rubbish, and shall report quarterly to the board on such non-covered property disposition. Such report shall include any revenue received from scrap material or property.

3. CUSTODY AND CONTROL OF THE PROPERTY OF THE CORPORATION

The custody and control of the Corporation Property, pending its disposition, and the Disposal of such Property, shall be performed by the Corporation or by the NYS Commissioner of General Services when so authorized, under the PAL, these Guidelines, and the NFPCL.

4. DISPOSAL OF THE CORPORATION PROPERTY.

The disposal of property by the Corporation shall be governed by these guidelines and shall at all times be consistent with the applicable provisions of the NFPCL and the PAL.

4.1 Appraisal: Prior to disposal, an appraisal shall be made by an independent appraiser of the value of any interest in real property, or any other Property which because of its unique nature is not subject to fair market pricing. Said appraisal shall be included in the Corporation's record of the transaction for the Property.

4.2 Available Procedures for Disposal of Real Property

(A) **Sealed Bid:** the Corporation shall dispose of any real property and appurtenances, to any purchaser at the highest marketable price or rental by sealed bids pursuant to PAL § 2897(6)(a) except that the Corporation may dispose of real property as provide in sections 4.2(B) and 4.2(C) below.

- (1) The advertisement for bids shall be made at such time prior to the disposal or contract, through such methods, and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the property; and
- (2) All bids shall be directed to the Secretary of the Corporation and publically disclosed at the time and place stated in the advertisement; and
- (3) The award shall be made with reasonable promptness by notice to the responsible bidder whose bid conforming to the invitation for bids, will be most advantageous to the state, price, and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

(B) **Public Auction:** The Corporation may dispose of real property and appurtenances thereto by auction when:

- (1) Pursuant to PAL § 2897(6)(c)(ii) when the fair market value does not exceed fifteen thousand dollars; or
- (2) Pursuant to PAL § 2897(6)(c)(iii) when the bid prices after advertising therefor are not reasonable, either as to all or part of the property, or have not been independently arrived at in open competition; or
- (3) Pursuant to PAL § 2897(6)(v) and § 2897(7)(ii) when the purpose of the transfer is within the purpose, mission or governing statute of the Corporation.

Auction Procedure: Upon the determination of the Corporation that a parcel of real property is to be disposed of by public auction, the Corporation shall publish on its webpage, a notice of the auction, the terms of the auction, and the qualifications for bidders. The Corporation shall also post said notice in the City or Town Hall, or Village Office in the jurisdiction where the property lies and shall further post said notice at the Erie County Courthouse, 92 Franklin Street, Buffalo 14202. The Corporation may also take other actions as determined by the Corporation to publish or advertise the auction in such a way so as to obtain competition as feasible under the circumstances.

(C) **Negotiation :** The Corporation may dispose of real property by negotiation when:

- (1) **The purchaser is a Government or other Public Entity:** the Corporation may dispose of real property and appurtenances thereto to a government or other public entity by negotiation:

- (a) Pursuant to PAL § 2897(6)(c)(iv) when the estimated fair market value of the property and other satisfactory terms of disposal are obtained; or
 - (b) Pursuant to PAL § 2897(6)(c)(v); and § 2897(7)(i), where the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or other public entity; or when,
- (2) **The fair market value of the property does not exceed fifteen thousand dollars:** the Corporation may dispose of any real property by negotiation pursuant to PAL § 2897(6)(c)(ii) subject to obtaining such competition as is feasible under the circumstances when the fair market value of the real property does not exceed fifteen thousand dollars; or when,
- (3) **The disposal of the property is within the mission, purpose or governing statute of the Corporation:** the Corporation may dispose of any real property by negotiation pursuant to PAL § 2897(6)(c)(v) and PAL2897(7)(ii) when the purpose of the transfer is within the purpose, mission or governing statute (NFPCL) of the Corporation.

4.3 Available Procedures for Disposal of Personal Property

(A) **Public Auction or Negotiation:** the Corporation may dispose of personal property by public auction or negotiation when:

- (1) The personal property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value; or when,
- (2) the fair market value of the property does not exceed fifteen thousand dollars; or when,
- (3) the disposal of the personal property for less than market value is authorized pursuant to PAL § 2897(7).

(B) **Sealed Bid-** the Corporation may dispose of personal property by sealed bid subject to the same provisions as applicable under section 4.2(A) of these Guidelines.

5. DISPOSAL OF PROPERTY FOR LESS THAN FAIR MARKET VALUE

5.1 **Disposal of Property for less than fair market value:** The Corporation may dispose of real property for less than fair market value:

- (A) Pursuant to PAL § 2897(7)(i) when the disposal is to a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity; or ,
- (B) Pursuant to PAL § 2897(7)(ii) the purpose of the disposal is within the purpose, mission, or governing statute of the Corporation; or,
- (C) Pursuant to PAL § 2897(iii) when the disposal is not to a governmental entity, and the disposal is not consistent with the Corporation purpose, mission or governing statute where the Corporation has provided written notification of the disposal to the governor, the speaker of the assembly, and the temporary president of the senate, and the proposed transfer is not denied by the governor, the senate, or the assembly pursuant to the terms of PAL § 2897(7)(iii).

5.2. Information to be provided to the Board: In the event that a below fair market value asset transfer is proposed, the following information must be provided to the Board and the public pursuant to PAL § 2897(7)(b) :

- (A) a full description of the asset; and
- (B) an appraisal of the fair market value of the asset, and any other information establishing the fair market value sought by the Board; and
- (C) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer; and
- (D) a statement of the value received compared to the fair market value; and
- (E) the names of any private parties participating in the transfer, and if different than the statement under subsection D of this section, a statement of the value to the private party; and,
- (F) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

5.3 Board approval of disposal of property for less than fair market value: prior to disposing of property for less than market value, the board shall consider the information described in section 5.2 of these guidelines and make a written determination by Resolution that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

6. REPORTS AND TRANSMITTALS

6.1 **Filing of the Guidelines:** On or before the 31st day of March each year, the Corporation shall file with the New York State Comptroller the copy of these guidelines most recently reviewed and approved by the Board.

6.2 **Explanatory statements for negotiated disposals:** Pursuant to PAL §2897(d)(i) an explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

- (A) any personal property which has an estimated fair market value in excess of fifteen thousand dollars; or
- (B) any real property (other than by lease) that has an estimated fair market value in excess of one-hundred thousand dollars; or
- (C) any real property disposed of by lease, if the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars; or
- (D) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

An explanatory statement when required under this section shall be transmitted to the comptroller, the director of the budget, the commissioner of general services, the legislature, and the authorities budget office.

6.3 **Proposed transfer for less than fair market value to a non-governmental entity where the disposal would not be consistent with the Corporation's mission, purpose, or governing statutes:** Whenever the Corporation proposes to transfer an asset for less than fair market value to a non-governmental entity where the disposal would **not be** consistent with the Corporation's mission, purpose, or governing statutes, the Corporation shall provide written notification thereof to the governor, the speaker of the assembly, and the temporary president of the senate, and such proposal shall be subject to denial by the governor, the senate, or the assembly pursuant to the terms of PAL § 2897(7)(iii).

6.4 **Property Report:** the Corporation shall publish annually a report listing all Property of the Corporation as required pursuant to PAL § 2896(3)(a). Such report shall include a list and full description of all real and personal Property disposed of during such period. The report shall contain the price received by the Corporation and the name of the purchaser for all such Property sold by the Corporation during such period.

The Corporation shall deliver copies of such report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services, the New York State Legislature, and the Authorities Budget Office as required pursuant to PAL § 2896(3)(b).

6.5 Disposition Inventory: the Corporation shall maintain and make available for public review and inspection a complete inventory of real property dispositions by the Corporation as required pursuant to NFPCL § 1609(b). Such inventory shall include a complete copy of the sales contract including all terms and conditions including but not limited to any form of compensation received by the Corporation or any other party which is not included in the sales price. All Property dispositions shall be listed on the disposition inventory within one week of disposition and such records shall remain available to the public indefinitely. Failure to strictly comply with this section could result in the imposition of a civil penalties or an action to seek rescission of the sale pursuant to NFPCL § 1609(h).

7. DISPOSAL BY COMMISSIONER OF GENERAL SERVICES.

If the Board finds that that Disposal of any of the Corporation's Property by the Commissioner of General Services will be advantageous to the Corporation and the State of New York, the Corporation may enter into an agreement with the Commissioner of General Services pursuant to which said Commissioner may dispose of Property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner. In disposing of any such Property, the Commissioner shall be bound by the terms of Title 5-A of the PAL and references to the Contracting Officer shall be deemed to refer to the Commissioner of General Services.

8. REAL PROPERTY DISPOSITION CONTRACTS

8.1 Consideration: All real property disposition contracts of the Corporation shall contain any and all consideration received by the Corporation, or any third party for the disposition of the real property subject of the contract. Consideration may take the form of monetary payments, secured financial obligation, restrictive covenants and conditions placed upon the real property, contractual commitments of the purchaser, rights of reacquisition, rights of reverter, rights of re-entry, and any other forms of consideration as are consistent with state and local law.

8.2 Records of Real Property Disposition Contracts to be Retained: Copies of all Real Property Disposition Contracts shall be retained indefinitely by the Corporation. Copies of contracts under this section shall be kept as a part of the Corporation's disposition file and shall also be incorporated into the disposition inventory as set forth in section 6.5 of these Guidelines. Copies may be kept in original form, electronically, or in both forms.

9. ANNUAL REVIEW AND AMENDMENTS OF GUIDELINES.

These Guidelines are subject to modification and amendment at the discretion of the Board in accordance with the PAL and NFPCL. The Guidelines shall be reviewed and approved annually by the Corporation. On or before March 31st of each year, the Guidelines most recently reviewed and approved including the name of the Contracting Officer shall be filed with the Comptroller of the State and posted on the Corporation's website.