

GUIDELINES

AND

PROCEDURES

FOR THE

DISPOSAL OF REAL PROPERTY

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**GUIDELINES AND PROCEDURES
FOR THE DISPOSAL OF REAL PROPERTY**

I. PURPOSE

The purpose of these Guidelines and Procedures for the Disposal of Real Property ("Guidelines"), which comply with Title 5-A, Article 9 of the Public Authorities Law, is to establish the procedures which detail the Authority's operative policy and instructions regarding the disposal of real property and designate a contracting officer who is responsible for the Authority's compliance with, and enforcement of, such Guidelines.

II. DEFINITIONS

2.1 "Contracting Officer" shall mean the officer or employee of the Authority who shall be appointed by resolution of the Authority's Trustees to be responsible for enforcement of the Guidelines for the Disposal of Real Property. The "Contracting Officer" is hereby designated to be the Senior Vice President – Enterprise Shared Services, or equivalent(s) or designee.

2.2 For the purposes of these Guidelines, "Dispose" or "Disposal" shall mean transfer of title or any other beneficial interest in real property in accordance with these Guidelines. Disposal does not include a release of an easement.

- 2.3 For the purposes of these Guidelines, "Real Property" shall mean real property, including land, tenements and hereditaments owned by the Authority, and any other interest in such real property, to the extent that such interest may be conveyed to another person or entity for any purpose, excluding an interest securing a loan or other financial obligation of another party.
- 2.4 The term "Relative" shall mean any person living in the same household as the Authority employee or any person who is a direct descendant of the Authority employee's grandparents or the spouse of such descendant as referred to in Subsection 5.11.1.

III. CONTROLLING LEGISLATION

The Public Authorities Accountability Act of 2005 ("PAAA") requires the Authority to establish policy guidelines to accomplish the following:

- 3.1 Maintain inventory controls and accountability systems for all Real Property under the Authority's control.
- 3.2 Periodically inventory Authority Real Property to determine which Real Property shall be Disposed of.
- 3.3 Dispose of Authority Real Property interests in accordance with the PAAA.
- 3.4 Prepare annual reports of Real Property Disposal transactions.

IV. DUTIES OF THE DIRECTOR OF REAL ESTATE

- 4.1 The Director of Real Estate or equivalent(s) or designee shall maintain adequate inventory controls and accountability systems for all Real Property under the Authority's control.
- 4.2 The Director of Real Estate or equivalent(s) or designee shall annually inventory Authority Real Property to determine which Authority Real Property shall be Disposed of and shall prepare a report identifying such Real Property for Disposal.
- 4.3 The Directory of Real Estate or equivalent(s) or designee shall produce for publishing written reports of such Real Property as set forth in Article VI of these Guidelines.
- 4.4 The Director of Real Estate or equivalent(s) or designee shall arrange for the Disposal of any Real Property identified for Disposal by the Authority in accordance with these Guidelines and the Authority's Expenditure Authorization Procedures and as soon as reasonably practical under the circumstances.

V. DISPOSITION OF REAL PROPERTY

- 5.1 The Authority may Dispose of Real Property for not less than the fair market value of such Real Property by sale, exchange, or transfer, for cash, credit or other property, without warranty, and upon such other terms and conditions as the Contracting Officer deems proper under the provisions of the PAAA and as implemented by these Guidelines. Fair market value of the Authority Real Property subject to Disposal shall be established by independent appraisal as

appropriate and consistent with the intent of the PAAA. Such appraisal documents shall be included in the record of the Real Property Disposal transaction.

5.2 Except as set forth in Section 5.3 of the Guidelines, any Disposal of Real Property shall only be made after publicly advertising for bids in accordance with the following:

5.2.1 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 Real Property;

5.2.2 all bids shall be publicly disclosed at the time and place stated in the advertisement; and

5.2.3 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 Authority, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

5.3 The Disposal of Authority Real Property may be negotiated or made by public auction without regard to Section 5.2 but subject to obtaining such competition as is feasible under the circumstances, if:

5.3.1 the fair market value of the Real Property does not exceed fifteen thousand dollars (\$15,000.00);

5.3.2 bid prices after advertising therefore are not reasonable, either

as to all or some part of the Real Property, or have not been independently arrived at in open competition;

5.3.3 the Disposal will be to the state or any political subdivision, and the estimated fair market value of the Real Property and other satisfactory terms of Disposal are obtained by negotiation;

5.3.4 the Disposal is for an amount less than the estimated fair market value of the Real Property, the terms of such Disposal are obtained by public auction or negotiation, the Disposal of the Real Property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision (to include but not limited to, the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the Authority's enabling legislation permits), and the purpose and the terms of such Disposal are documented in writing and approved by the Authority's Trustees; or

5.3.5 such action is otherwise authorized by law.

5.4 An explanatory statement detailing the Disposal by negotiation of Authority Real Property subject to the PAAA as set forth in Section 5.3 shall be made for any Disposal of:

- 5.4.1 Real Property with a fair market value in excess of one hundred thousand dollars (\$100,000.00) except that Real Property Disposed of by lease or exchange shall only be subject to 5.4.2 through 5.4.4 of this Section 5.4;
- 5.4.2 Real Property leased for a term of five years or less, if the estimated fair annual rent exceeds one hundred thousand dollars (\$100,000.00) for any of such years;
- 5.4.3 Real Property leased for a term of more than five years if total estimated rent over term is in excess of one hundred thousand dollars (\$100,000.00); and
- 5.4.4 Any Real Property or real and related personal property Disposed of by exchange, regardless of value, or any property any part of the consideration is for Real Property:
- 5.5 Each explanatory statement prepared in accordance with Section 5.4 above shall be transmitted to the State Comptroller, the Director of the Budget, the Commissioner of General Services, and the State Legislature not less than 90 days in advance of such Disposal, and a copy shall be kept by the Authority.
- 5.6 In the Authority's discretion, when it shall be deemed advantageous to the Authority and the State, the Authority may enter into an agreement with the Office of the Commissioner of General Services ("OGS") under which OGS may Dispose of the Authority's Real Property under terms and conditions agreed to by

the Authority and the OGS. In Disposing of any such Real Property of the Authority, the OGS shall be bound by the relevant provisions of the PAAA.

- 5.7 The Guidelines shall not apply to any transfers of jurisdiction by the Authority pursuant to Public Lands Law §3(4).
- 5.8 The Director of Real Estate or equivalent(s) or designee shall provide all relevant documentation to the Environmental Division for the purposes of determining, if applicable, whether the Disposal of Real Property is in compliance with the State Environmental Quality Review Act, and for whether it adheres to the American Society of Testing and Material's guidelines for Environmental Site Assessments, if applicable.
- 5.9 No Authority employee who is involved in the award of Authority grants or contracts, may ask any purchaser(s), grantor(s), lessor(s) or officer(s), director(s) or employee(s) of such current or prospective purchaser(s), contractor(s) or grantee(s) to reveal: (a) the political party affiliation of the individual; (b) whether the individual or entity has made campaign contributions to any political party, elected official, or candidate for elective office; or (c) whether the individual voted for or against any political party, elected official or candidate for elective office.
- 5.10 No Authority employee may award or decline to award any grant or contract, or recommend, promise or threaten to do so because of a current or prospective grantee's or contractor's: (a) refusal to answer any inquiry prohibited by Section

5.9 above or (b) giving or withholding or neglecting to make any contribution of money, service or any other valuable thing for any political purpose.

5.11 No Authority employee may take part in any contracting decision involving the payment of more than \$1,000: (i) to a Relative; or (ii) to any entity in which a Relative owns or controls 10% or more of the stock of such entity (or 1% in the case of a corporation whose stock is regularly traded on an established securities exchange); or serves as an officer, director or partner of that entity. If such situation arises, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

5.11.1 For purposes of this Section 5.11, the term "Relative" is defined in Section 2.4 of these Guidelines.

VI. AUTHORITY REAL PROPERTY REPORTS

6.1 The Director of Real Estate or equivalent(s) or designee shall publish the following reports in accordance with these Guidelines:

6.1.1 Pursuant to Section 2800 of the Public Authorities Law, the Director of Real Estate shall furnish a report for incorporation in the Authority's annual report which is distributed to the Governor, the Senate Finance Committee, the Assembly Ways and Means Committee, and the State Comptroller. This report shall include:

(a) a listing of all Authority Real Property having an estimated fair

market value greater than fifteen thousand dollars (\$15,000.00) that the Authority intends to Dispose of; (b) a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) intended for Disposal but still owned by the Authority at the end of the fiscal reporting period; and (c) a listing of all Real Property having an estimated fair market value greater than fifteen thousand dollars (\$15,000.00) Disposed of during the fiscal reporting period including the name of the purchaser of the Real Property and the price paid for the Real Property.

6.1.2 Pursuant to Public Authorities Law § 2896(3)(a), the Director of Real Estate or equivalent(s) or designee shall prepare for distribution to the State Comptroller, the Director of the Budget, the Commissioner of General Services, and the State Legislature, an annual report which shall consist of a list and description of all Real Property including such Real Property Disposed of during the fiscal reporting period. Regarding Disposals, this annual report shall include the price received by the Authority and the name of the purchaser of the Real Property.

6.2 The Authority may be called upon periodically to submit information regarding the Disposal of Real Property to organizations implementing the PAAA or other statutes regulating the Disposal of Real Property.

- 6.3 The Authority's Governance Committee meets at least three times per year and staff from Enterprise Shared Services – Real Estate or the equivalent(s) may prepare and present ongoing reports regarding the Disposal of Real Property.

VII. APPROVAL OF GUIDELINES BY THE AUTHORITY'S BOARD

- 7.1 The Guidelines shall be annually reviewed and approved by the Authority's Trustees. On or before the thirty-first day of March in each year, the Authority shall file with the State Comptroller a copy of the most recently reviewed and approved Guidelines, including the name of the Authority's designated Contracting Officer. At the time of filing such Guidelines with the State Comptroller, the Authority shall also post such Guidelines on its internet website.

VIII. REFERENCES

- 8.1 Chapter 766 of the Laws of 2005
- 8.2 Public Lands Law §3 (4)
- 8.3 Chapter 14 of the Laws of 2007