

NEW YORK STATE
ENERGY RESEARCH AND DEVELOPMENT AUTHORITY

GUIDELINES, OPERATIVE POLICY AND INSTRUCTIONS FOR THE DISPOSAL OF
REAL AND PERSONAL PROPERTY

June 2018

Article I. Purpose and Applicability

1.0 These Guidelines for the Disposal of Real and Personal Property (“Guidelines”), adopted pursuant to Public Authorities Law Sections 2895, 2896, and 2897, set forth the operative policies of the Authority and instructions to its officers and employees regarding the disposal of real and personal property.

1.1 These Guidelines apply to any disposal of real or personal property taking place after they become effective pursuant to the provisions of Section 1853 of the Public Authorities Law.

Article II. Definitions

2.0 As used in these Guidelines, “Contracting Officer” means the Treasurer appointed herein by the Members to be responsible for the disposition of Property.

2.1 As used in these Guidelines, “dispose”, “disposal” or “disposition” means the transfer of title or any other beneficial interest in personal or real property in accordance with Section 2897 of the Public Authorities Law.

2.2 As used in these Guidelines, “Property” means personal property in excess of five thousand dollars 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.

Article III. Designation of the Contracting Officer; Accountability for Property

3.0 The Treasurer is the Contracting Officer who will be responsible for compliance with, and enforcement of, these Guidelines.

3.1 The Authority shall maintain accountability and a system of internal controls for all Property under its control. The Contracting Officer will conduct no less than a biennial inventory of Property and reconcile such inventory against accounting records maintained for such Property. The Contracting Officer will also periodically inventory Property to determine which Property should be disposed of and will transfer or dispose of such Property as promptly as possible in accordance with Article IV below. The Contracting Officer and any other Officer authorized by resolution may execute such documents for the transfer of title or other interest in Property and take such other action as is required or deemed necessary and proper to dispose of such Property.

Article IV. Method of Disposal of Property Including Use and Awarding of Contracts for Disposal

4.0 Except as otherwise provided herein, Property may be disposed of for not less than its fair market value by sale, exchange, or transfer for cash, credit, or other property, with or without warranty, and upon such terms and conditions as the Contracting Officer deems proper. No disposition of real property, or any interest in real property, will be made unless an appraisal of the value of such property has been made by an independent appraiser and included in the record of the transaction, and, provided further, that no disposition of any other property, which because of its unique nature or the unique circumstances of the proposed transaction is not readily valued by reference to an active market for similar property, shall be made without a similar appraisal.

4.1 When it is deemed advantageous to the State, the Authority may enter into an agreement with the Commissioner of General Services for the disposal of Property pursuant to which such Commissioner may dispose of Property of the Authority under terms and conditions agreed to by the Authority and such Commissioner. In disposing of the Property, the Commissioner of General Services will be bound by the terms of these Guidelines and references to the Contracting Officer will be deemed to refer to such Commissioner.

4.2 A deed, bill of sale, lease, or other instrument executed by or on behalf of the Authority, purporting to transfer title or any interest in Property of the Authority will be conclusive evidence of compliance with the Guidelines insofar as concerns title or other interest of any bona fide grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of lack of such compliance prior to closing.

4.3 All disposals or contracts for disposal of Property made or authorized by the Contracting Officer will be made after publicly advertising for bids, except as otherwise provided below in Sections 4.4 and 4.5. Whenever public advertising for bids is required under these Guidelines: (i) 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 will permit, full and free competition consistent with the value and nature of the Property; (ii) all bids shall be publicly disclosed at the time and place stated in the advertisement; and (iii) the award will 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.

4.4 Disposals and contracts for disposal of Property may be negotiated or made by public auction without public advertisement, but subject to obtaining such competition as is feasible under the circumstances, if: (i) 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 if the personal property is to be sold in such quantity that, if it were disposed of through public advertisement, would adversely affect the State or local market for such personal property, and the estimated fair market value of such personal property and other satisfactory terms of disposal can be obtained by negotiation; (ii) the fair market value of Property does not exceed fifteen thousand dollars; (iii) bid prices after advertising therefor are not reasonable, either to all or some part of

the Property, or have not been independently arrived at in open competition; (iv) the disposal will be to the State or any political subdivision, and the estimated fair market value of the Property and other satisfactory terms of disposal are obtained by negotiation; (v) under those circumstances permitted provided below by Section 4.6; or (vi) such action is otherwise authorized by law.

4.5 An explanatory statement will be prepared of the circumstances of each disposal by negotiation of: (i) any personal property which has an estimated fair market value in excess of fifteen thousand dollars; (ii) any real property that has an estimated fair market value in excess of one hundred thousand dollars, except that any real property disposed of by lease or exchange will only be subject to clauses (iii) and (iv) below; (iii) 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; (iv) any real property or real and related personal property disposed of by exchange, regardless of value, or any such real property or real and related personal property any part of the consideration for which is real property.

4.6 Disposal of Property for less than fair market value.

a. No asset owned, leased or otherwise in the control of the Authority may be sold, leased, or otherwise alienated for less than its fair market value except if:

(i) the transferee is 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;

(ii) the purpose of the transfer is within the purpose, mission or governing statute of the Authority; or

(iii) in the event the Authority seeks to transfer an asset for less than its fair market value to other than a governmental entity, which disposal would not be consistent with the Authority's mission, purpose or governing statutes, the Authority shall provide written notification thereof to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate, and such proposed transfer shall be subject to denial by the Governor, the Senate, or the Assembly. Denial by the Governor shall take the form of a signed certification by the Governor. Denial by either House of the Legislature shall take the form of a resolution by such House. The Governor and each House of the Legislature shall take any such action within sixty days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer.

b. In the event a below fair market value asset transfer is proposed, the following information must be provided to the Members and the public:

(i) a full description of the asset;

(ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the Members;

(iii) 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;

(iv) a statement of the value to be received compared to the fair market value;

(v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this subsection, a statement of the value to the private party; and

(vi) 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.

c. Before approving the disposal of any property for less than fair market value, the Members shall consider the information described in paragraph b of this section and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.

Article V. Approval of Guidelines: Monitoring and Reporting on Disposal of Property

5.0 These Guidelines will be submitted to the Members annually for review and approval.

5.2 On or before March 31, of each year, the Authority will submit the most recently reviewed and approved Guidelines to the Comptroller. At the time of filing of such Guidelines, the Authority will post the Guidelines on its internet website and will maintain such site until the Guidelines for the following year are approved.

5.3 The Contracting Officer will annually prepare a report listing all real property of the Authority and a full description of all real and personal property disposed of during such period. Such report will include the name of the purchaser of such Property and the price received. Such report will be submitted to the Members for review and approval for submission to the Comptroller, the Director of the Budget, the Commissioner of General Services, the Legislature (i.e., the New York State Assembly Administrative Regulation Revision Commission, the New York State Senate Administrative Regulation Revision Commission, Majority Leader of The Senate, and the Speaker of the Assembly), and the Authorities Budget Office.

5.4 Each explanatory statement prepared pursuant to Section 4.5 of the Guidelines will be transmitted to the Comptroller, the Director of the Budget, the Commissioner of General Services, the Legislature (i.e., the New York State Assembly Administrative Regulation Revision Commission, the New York State Senate Administrative Regulation Revision Commission, Majority Leader of The Senate, and the Speaker of the Assembly), and the Authorities Budget Office not less than ninety days in advance of such disposal, and a copy thereof will be preserved in the files of the Authority.