

RESOLUTION NO. [2979]

A RESOLUTION OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION WITH RESPECT TO THE ANNUAL REVIEW AND APPROVAL OF THE CORPORATION'S GUIDELINES FOR THE DISPOSITION OF PROPERTY

WHEREAS, the Corporation is required by the provisions of Section 2896 of the Public Authorities Law to adopt and to annually review and approve its Guidelines for the Disposition of Property; and

WHEREAS, on June 23, 2022, the Board of Directors (the "Board") adopted Resolution No. 2919 approving the Corporation's Guidelines for the Disposition of Property; and

WHEREAS, the Board of Directors desires to amend the Guidelines for the Disposition of Property to correct formatting and make other non-substantive changes; and

WHEREAS, the Board desires to approve the amended Guidelines for the Disposition of Property.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE NEW YORK STATE ENVIRONMENTAL FACILITIES CORPORATION, AS FOLLOWS:

Section 1. The Corporation's Guidelines for the Disposition of Property, dated June 22, 2023, a copy of which is annexed hereto and made part hereof, are hereby approved.

Section 2. This Resolution shall take effect immediately.

Guidelines for the Disposition of Property

Guidelines for Disposition of Property

June 22, 2023

I. Background and Purpose

The Public Authorities Law (the “Act”) requires the Corporation to adopt by resolution comprehensive guidelines which (a) detail the Corporation’s operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property and (b) designate a Contracting Officer who is responsible for the compliance with, and enforcement of, these guidelines. These guidelines shall be annually reviewed and approved by the Board of Directors. As with other policies of the Corporation, these guidelines will also be reviewed, revised, and updated more frequently if needed.

The Act requires the Corporation to establish Guidelines to ensure that the Corporation will:

- (1) maintain adequate inventory controls and accountability systems for all Property owned by the Corporation and under its control;
- (2) periodically inventory such Property to determine which Property will be disposed of;
- (3) produce a written report of such Property in accordance with the Act; and
- (4) dispose of such Property as promptly as possible in accordance with the Act.

These Guidelines are intended to be consistent with the Act. To the extent there is a conflict between these Guidelines and the Act, the Act shall govern.

II. Guidelines

A. Definitions

For the purposes of these guidelines, unless a different meaning is required by the context:

1. The term “Contracting Officer” means the officer or employee of the Corporation who shall be appointed by resolution of the Board of Directors to be responsible for the disposition of Property and the Corporation’s compliance with, and enforcement of, these guidelines.
2. The term “dispose” or “disposal” means transfer of title or any other beneficial interest in personal or real property.
3. The term “property” means 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.

B. Contracting Officer

The Board of Directors hereby designates the Director of Administration and Corporate Operations as Contracting Officer. Except as otherwise provided herein and in the Act, the Contracting Officer will have

supervision and direction over the disposal of Property of the Corporation and be responsible for the compliance by the Corporation with, and enforcement of, these Guidelines.

The Contracting Officer shall:

1. maintain adequate inventory controls and accountability systems for all property owned by the Corporation and under its control;
2. periodically inventory such property to determine which property shall be disposed of;
3. produce a written report of such property in accordance with Section II(C); and
4. transfer or dispose of such property as promptly and practicably as possible in accordance with Section II(D).

C. Report

The Corporation shall publish, not less than annually, a report listing all real property owned in fee by the Corporation. Such report shall also consist of:

1. a list and full description of all real and personal property disposed of during such period;
2. the price received by the Corporation; and
3. the name of the purchaser for all such property disposed of 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, Commissioner of the New York State Office of General Services (“OGS”), the New York State Legislature (via distribution to the majority leader of the senate and the speaker of the assembly), and the Authorities Budget Office.

D. Disposal of Public Authority Property

1. Supervision and Direction

Except as otherwise provided in this section, the Contracting Officer designated by the Board of Directors shall have supervision and direction over the disposition of property of the Corporation.

2. Custody and Control

The custody and control of the property the Corporation, pending its disposition, and the disposal of such property, shall be performed by the Corporation or by the Commissioner of the New York State Office of General Services when so authorized under this section.

3. Method of Disposition

The Corporation may dispose of property for not less than the fair market value of such property by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the contracting officer deems proper, and it may execute such documents for the transfer of title or other interest in property and take such other action as it

deems necessary or proper to dispose of such property under the provisions of this section. Provided, however, that no disposition of real property, or any interest in real property, shall 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. Sales by the Commissioner of OGS

When it shall be deemed advantageous to the state, the Corporation may enter into an agreement with the Commissioner of OGS where under such Commissioner may dispose of property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner of OGS. In disposing of any such property of the Corporation, the Commissioner of OGS shall be bound by the terms of these guidelines and references herein to the Contracting Officer shall be deemed to refer to the Commissioner of OGS.

5. Validity of Deed, Bill of Sale, Lease, or Other Instrument

A deed, bill of sale, lease, or other instrument executed by or on behalf of the Corporation, purporting to transfer title or any other interest in property of the Corporation shall be conclusive evidence of compliance with the Act 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 the closing.

E. Bids for Disposal; Advertising; Procedure; Disposal by Negotiation; Explanatory Statement

1. All disposals or contracts for disposal of property of the Corporation made or authorized by the Contracting Officer shall be made after publicly advertising for bids, except as provided in Section II(E)(3).

2. Whenever public advertising for bids is required under Section II(E)(1):

- a) the advertising 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;
- b) all bids shall be publicly disclosed at the time and place stated in the advertisement; and
- c) 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.

3. Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to Section II(E)(1) and (2) but subject to obtaining competition as is feasible under the circumstances, if:

- a) 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 under Section II(E)(1) and (2), would adversely affect the state or local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation,
- b) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);
- c) bid prices after advertising therefor are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
- d) 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;
- e) under those circumstances permitted by Section II(F); or
- f) such action is otherwise authorized by law.

4. 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 (\$15,000);
- b) any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000), except that any real property disposed of by lease or exchange shall only be subject to Section II(E)(4)(c) and (d);
- 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 (\$15,000); 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.

Each such statement shall be transmitted to the persons and/or entities entitled to receive copies of the report required under Section II(C) not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the public authority making such disposal.

F. Disposal of Property for Less than Fair Market Value

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

- a) 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 entity;
- b) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
- c) in the event the Corporation 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 Corporation 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 in accordance with the Act.

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

- a) a full description of the asset;
- b) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board;
- 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;
- d) a statement of the value to be received compared to the fair market value;
- e) the names of any private parties participating in the transfer, and if different than the statement required by Section II(F)(2)(d), 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.

3. Before approving the disposal of any property for less than fair market value, the board of any authority shall consider the information described in Section II(F)(2) 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.