

BUFFALO ERIE NIAGARA LAND IMPROVEMENT CORPORATION

PROPERTY DISPOSITION GUIDELINES

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**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 Executive Director, as 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 of Directors ("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.

**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, at the discretion of the Contracting Officer or if ordered by the Board, an appraisal, review or estimate may be made by an appraiser, municipal assessor, real property appraiser, or other qualified person, 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, review or estimate, if made, shall be included in the Corporation's record of the transaction for the Property.

#### 4.2 Available Procedures for Disposal of Real Property

- (A) **Negotiation** : The Corporation may dispose of real property by negotiation
- (B) **Sealed Bid**: the Corporation may dispose of any real property and appurtenances, to any purchaser at the highest marketable price or rental by sealed bids.
  - (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 Executive Director and publically disclosed at the time and place stated in the advertisement; and
  - (3) The award shall be made by the Board 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 by the Board at its discretion.
- (C) **Public Auction**: The Corporation may dispose of real property and appurtenances thereto by auction.
  - (1) 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 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

#### 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.
- (B) **Sealed Bid**- the Corporation may dispose of personal property by sealed bid.
- (C) **Personal property of five thousand dollars or less** - Personal property with an estimated value of \$5,000 or less may be sold or disposed of at the discretion of the Executive Director

## **5. INFORMATION PROVIDED TO THE BOARD**

**5.1 Information to be provided to the Board:** the following information shall be provided to the Board for its consideration in approving the disposition of Property:

- (A) a full description of the asset; and
- (B) an appraisal, review or estimate 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; 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,
- (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.

## **6. REPORTS AND TRANSMITTALS**

**6.1 Filing of the Guidelines:** On or before the 31<sup>st</sup> 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 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).

**6.3 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. REAL PROPERTY DISPOSITION CONTRACTS**

**7.1 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.

**7.2 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 6.3 of these Guidelines. Copies may be kept in original form, electronically, or in both forms.

## **8. 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 31<sup>st</sup> 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.