

**BATAVIA DEVELOPMENT CORPORATION DISPOSITION OF REAL
PROPERTY GUIDELINES**
ADOPTED PURSUANT TO SECTION 2896 OF THE PUBLIC AUTHORITIES LAW

SECTION 1. DEFINITIONS

A. "Contracting officer" shall mean the officer or employee of the Batavia Development Corporation (hereinafter, the "BDC") who shall be appointed by resolution to be responsible for the disposition of property.

B. "Dispose" or "disposal" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with section 2897 of the Public Authorities Law.

C. "Property" shall mean personal property in excess of five thousand dollars (\$5,000) in value, and 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.

SECTION 2. DUTIES

A. The BDC shall:

(i) maintain adequate inventory controls and accountability systems for all property owned by the BDC and under its control;

(ii) periodically inventory such property to determine which property shall be disposed of;

(iii) produce a written report of such property in accordance with subsection B herewith; and

(iv) transfer or dispose of such property as promptly and practicably as possible in accordance with Section 3 below.

B. The BDC shall:

(i) annually publish, a report listing all real property owned in fee by the BDC. Such report shall consist of 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 BDC and the name of the purchaser for all such property sold by the BDC during such period; and

(ii) 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, and the New York State Legislature (via distribution to the Majority Leader of the Senate and the Speaker of the Assembly).

SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY

A. Supervision and Direction. Except as otherwise provided herein, the duly appointed Contracting Officer shall have supervision and direction over the disposition and sale of property of the BDC. The BDC shall have the right to dispose of its property for any valid corporate purpose.

B. Custody and Control. The custody and control of BDC property, pending its disposition, and the disposal of such property, shall be performed by the BDC or by the Commissioner of General Services when so authorized under this section.

C. Method of Disposition. Unless otherwise permitted, the BDC shall dispose of property 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 other terms and conditions as the BDC and/or Contracting Officer deems proper. The BDC 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, except in compliance with all applicable law, no disposition of real property, any interest in real property, or any other property which because of its unique nature is not subject to fair market pricing 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.

D. Sales by the Commissioner of General Services (the "Commissioner"). If the BDC deems that the transfer of property by the Commissioner will be advantageous to the State of New York, the BDC may enter into an agreement with the Commissioner of pursuant to which Commissioner may dispose of property of the BDC under terms and conditions agreed to by the BDC and the Commissioner. In disposing of any such property, the Commissioner shall be bound by the terms hereof and references to the Contracting Officer shall be deemed to refer to such Commissioner.

E. 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 BDC, purporting to transfer title or any other interest in property of the BDC in accordance herewith shall be conclusive evidence of compliance with the provisions of these guidelines and all applicable law 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.

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

(i) Except as permitted by all applicable law, all disposals or contracts for disposal of property made or authorized by the BDC shall be made after publicly advertising for bids except as provided in subsection (iii) of this Section F.

(ii) Whenever public advertising for bids is required under subsection (i) of this Section F:

(A) 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 proposed for disposition;

(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 BDC, price and other factors considered; provided, that all bids may be rejected at the BDC's discretion; and

(D) All bids shall include an expiration date.

(iii) Disposals and contracts for disposal of property may be negotiated or made by public auction without regard to subsections (i) and (ii) of this Section F but subject to obtaining such competition as is feasible under the circumstances, if:

(A) the personal property involved is of a nature and quantity which, if disposed of under subsections (i) and (ii) of this Section F, 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 (\$15,000.00);

(C) bid prices after advertising therefore 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, any political subdivision or public benefit corporation, 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 subdivision (iv) below.

(iv) No property owned, leased or otherwise in the control of the BDC may be sold, leased, or otherwise alienated for less than its FMV except if:

(A) Transferee is a government or public entity and terms of disposition require ownership and use to remain with the government or public entity; or

(B) Purpose of disposition is within purpose, mission or statute of the BDC;
or

(C) BDC seeks to dispose of the property to a non-governmental entity and the disposition is not consistent with the BDC's purpose, mission or statute, and the BDC either:

- i. provides written notification to the Governor and the State Legislature (via distribution to the Assembly's Speaker and the Senate's Temporary President), and all such recipients fail to deny the proposed disposition within the applicable time period as set forth in Section 2897 of the Public Authorities Law; or
- ii. the disposition is of property obtained by the BDC from a political subdivision where the BDC resides and is approved in accordance with Section 2897(7) of the Public Authorities Law.

(D) If below FMV disposition is proposed, the following information is required to be provided to the BDC's Board and the public:

- i. Description of property;
- ii. Appraisal of the FMV of the property;

- iii. Description of purpose of disposition, the kind and amount of the benefit to the public resulting from the disposition such as jobs and wages created or preserved;
- iv. Value received compared to FMV;
- v. Names of private parties to the transaction and value received;
- vi. Names of private parties that have made an offer, the value of offer, and purpose for which the property would have been used.

(E) BDC's Board must make a written determination that there is no reasonable alternative to the proposed below-market disposition that would achieve the same purpose of such disposition.

(v) (A) An explanatory statement shall 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 (\$15,000.00);
- ii. any real property that has an estimated fair market value in excess of one hundred thousand dollars (\$100,000.00);
- iii. any real property disposed of by lease if the estimated fair annual rent is in excess of fifteen thousand dollars (\$15,000);
- iv. any real property or real and related personal property disposed of by exchange, regardless of value;
- v. any part of the consideration for the property disposed consists of real property.

(B) Each such statement, as set forth in Subsection (iv)(A) of this Section, shall be transmitted to the persons entitled to receive copies of the report required under all applicable law not less than ninety (90) days in advance of such disposal, and a copy thereof shall be preserved in the files of the BDC.

G. Amendments. The Guidelines are subject to modification and amendment at the discretion of the BDC Board of Directors and shall be filed annually with all local and state agencies as required under all applicable law.

H. Contracting Officer. The designated Contracting Officer for the BDC is Julie

Pacatte, Economic Development Coordinator.

MOTION to approve, Peter Casey, 2nd Brenda Richardson

VOTE: carried

January 9, 2013