

ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
DISPOSITION OF PROPERTY POLICY GUIDELINES
ADOPTED PURSUANT TO SECTIONS 2895-2897 OF THE PUBLIC AUTHORITIES LAW

SECTION 1. DEFINITIONS

A. “Contracting officer” shall mean the officer or employee of the Orange County Development Agency (hereinafter, the “Agency”) who shall be appointed by resolution to be responsible for the disposition of property. The Agency Attorney shall likely be the Contracting Officer pursuant to annual resolution.

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 Agency shall:

(i) maintain adequate inventory controls and accountability systems for all property owned by the Agency 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 Agency shall

(i) publish, not less frequently than annually, a report listing all real property owned in fee by the Agency. 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 Agency and the name of the purchaser for all such property sold by the Agency during such period; and

(ii) shall deliver copies of such report to the State Comptroller, the Director of the Budget, the Commissioner of the Office of General Services, the New York State Legislature and the Authorities Budget Office.

SECTION 3. TRANSFER OR DISPOSITION OF PROPERTY

A. Supervision and Direction. Except as otherwise provided herein, the appointed contracting officer (the “Contracting Officer”) shall have supervision and direction over the disposition and sale of property of the Agency. The Agency shall have the right to dispose of its property for any valid corporate purpose.

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

C. Method of Disposition. The Agency may 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 Agency and/or contracting officer deems proper. The Agency 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 value of such property has been made by an independent appraiser and included in the record of the transaction. Furthermore, no disposition of any other property which because of its unique nature or the unique circumstance of the property transaction is not readily valued by reference to an active market for similar property shall be made without a similar appraisal.

D. Sales by the Commissioner of General Services (the “Commissioner”). When the Agency shall have deemed that transfer of property by the Commissioner will be advantageous to the State, the Agency may enter into an agreement with the Commissioner pursuant to which the Commissioner may dispose of property of the Agency under terms and conditions agreed to by the Agency 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 Agency, purporting to transfer title or any other interest in property of the Agency 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 authorized by the Agency 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;

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

(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 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 increase its value, or if the personal property is to be sold in such quantity that, if it was 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 (FMV) 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;

(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 circumstance permitted by Section 3G. herein; or

(F) such action is otherwise authorized by law.

(iv) (A) An explanatory statement shall be prepared of the circumstances of each disposal by negotiation of:

(1) any personal property which has an estimated fair market value in excess of fifteen thousand dollars;

(2) 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 shall only be subject to clauses (3) and (4) of this subparagraph;

(3) any real property disposed of by lease if the estimated fair annual rent is in excess of fifteen thousand dollars for any of such years;

(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 for which is real property.

(B) Each such statement 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 Agency making such disposal.

G. Disposal of Property for Less than Fair Market Value.

(i) No asset owned, leased or otherwise in control of the Agency 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 condition of the transfer require that the ownership and use of the asset will remain with the government or public entity; or

(B) the purpose of the transfer is within the purpose, mission or governing statute of the Agency; or

(C) In the event the Agency 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 Agency's mission, purpose or governing statute, such Agency shall provide written notification to the Governor, the Speaker of the Assembly, and the Temporary President of the Senate and such 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. The Governor and each house of the Legislature shall take any such action within 60 days of

receiving notification of such proposed transfer during the months of January through June provided that if the Legislature receives the notification of a proposed transfer during the months of July through December, the Legislature may take any such action within 60 days of January 1 of the following year. If no such resolution or certification is performed within 60 days of such notification of the proposed transfer, the Agency may effectuate such transfer. Provided, however, that with respect to a below market transfer by the Agency that is not within the purpose, mission or governing statute of the Agency, if the governing statute provides for the approval of the transfer by the executive and legislative branches of the County, and the transfer is of property obtained by the Agency from the County, then such approval shall be sufficient to permit the transfer.

(ii) In the event a below fair market value transfer is proposed, the following information must be provided to the Agency's board and the public:

(A) A full description of 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 required by the transfer;

(D) A statement of the value to be received compared to the fair market value;

(E) The names of the private parties participating in the transfer and, if different than the statement in D above, a statement of the value to the private party;

(F) The names of other private parties who made an offer for such asset, the value offered and the purpose for which the asset was sought to be used.

(iii) Before approving the disposal of any property for less than fair market value, the Board shall consider the information described in subsection (ii) above 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.

These Guidelines are subject to modification and amendment at the discretion of the Agency Board by resolution and shall be filed annually with all local and state agencies as required under all applicable law.