

NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

Operation Guidelines on Disposition of Public Authority Property

I. PURPOSE

These Operating Guidelines for the Disposal of Real and Personal Property (hereinafter "**Guidelines**"), which comply with the applicable provisions of Title 5-A, Article 9 of the Public Authorities Law, added to such law by the Public Authorities Accountability Act of 2005 ("PAAA"), as amended, establish the processes which detail the policy and instructions of the New York City School Construction Authority ("**SCA**") regarding the disposal of personal and real property. In addition, the Guidelines designate a Contracting Officer who shall be responsible for the SCA's compliance with, and enforcement of, the Guidelines.

II. DEFINITIONS (§ 2895)

- (i) "**Contracting Officer**" shall mean the officer or employee of the SCA who shall be appointed by resolution of the Board of Trustees ("**Board**") of the SCA, to be responsible for the disposition of Property.
- (ii) "**Dispose**" or "**Disposal**" shall mean transfer of title or any other beneficial interest in personal or real property in accordance with these Guidelines.
- (iii) "**Property**" shall mean personal property in excess of five thousand dollars (\$5,000.00) 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.

III. INVENTORY CONTROLS AND ACCOUNTABILITY REQUIREMENTS (§2896)

The Contracting Officer shall:

- (i) maintain adequate inventory controls and accountability systems for all Property under the SCA's control;
- (ii) periodically inventory Property to determine which, if any, of such Property should be Disposed of by the SCA and make recommendations accordingly; and

- (iii) prepare written reports of SCA Property Disposal transactions in accordance with Title 5-A Article 9 of the New York Public Authorities Law.

IV. DISPOSITION OF PROPERTY (§ 2897)

A. Unless otherwise authorized by these Guidelines or law, and except as otherwise authorized and required by SCA's enabling legislation set forth in Title 6 Article 8 of the New York Public Authorities Law Section §1728(11), the SCA, in accordance with Title 5-A Article 9 of the New York Public Authorities Law and other applicable laws, shall Dispose of Property for not less than fair market value ("FMV") 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. The Contracting Officer shall determine whether Disposal requires consent of City and Council pursuant to the SCA's enabling legislation set forth in Title 6 Article 8 of the New York Public Authorities Law Section §1728(12).

B. Provided, however, that unless otherwise authorized by these Guidelines or law, and except as otherwise expressly authorized and required by SCA's enabling legislation set forth in Title 6 Article 8 of the New York Public Authorities Law Section §1728(11), no disposition of 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.

C. Unless otherwise authorized by these Guidelines in Section IV. D, or law, and except as otherwise expressly authorized and required by SCA's enabling legislation set forth in Title 6 Article 8 of the New York Public Authorities Law Section §1728(11), prior to disposing of Property or entering into a contract for the Disposal of Property, the SCA shall publicly advertise for bids for such Disposal or contract for Disposal. Whenever public advertising for bids is required under this Section IV:

- (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 shall permit full and free competition consistent with the value and nature of the Property.
- (ii) Such advertisement shall include the date, time and place the bids will be publicly disclosed by the SCA.

- (iii) The SCA shall award the contract 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.

D. The SCA may Dispose of Property or enter into contracts for the Disposal of Property by negotiation or public auction without regard to Section IV. C, 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 property is to be sold in such quantity that, if it were disposed of under Section IV. C, 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;
- (ii) the FMV of the Property does not exceed fifteen thousand (\$15,000.00) dollars;
- (iii) 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;
- (iv) the Disposal will be to the state or any political subdivision, and the estimated FMV of the Property and other satisfactory terms of Disposal are obtained by negotiation;
- (v) the Disposal is for an amount less than the estimated FMV of the property, and (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 public entity; (b) the purpose of the transfer is within the purpose, mission or governing statute of the SCA; or (c) in the event SCA 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 SCA's mission, purpose or governing statutes, SCA shall provide written notification thereof to the governor, the speaker of the state assembly, and the temporary president of the state senate, and such proposed transfer shall be subject to denial by the governor, the state senate, or the state assembly in the manner specified in Section 2897(7)(iii); provided however, that with respect to a below market transfer by SCA that is not within the purpose,

mission or governing statute of the SCA, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which SCA resides, and the transfer is of property obtained by SCA for that political subdivision, then such approval shall be sufficient to permit the transfer; or

- (vi) such Disposal action is otherwise authorized by law including but not limited to disposition of Property by the SCA in furtherance of its enabling legislation Section §1728(11) of the New York Public Authorities Law and where the Property has been acquired for such purposes of disposal under Section §1728(6).

E. If a Disposal meets one of the criteria described above in Section IV, D for a negotiated disposition, the Contracting Officer may direct that the disposition of the real property be considered a negotiated disposition. In such circumstances, except as otherwise expressly authorized and required by SCA's enabling legislation set forth in Section §1728(11) of the New York Public Authorities Law Section §1728(11); an explanatory statement shall be prepared of the circumstances of each Disposal by negotiation of:

- (i) any personal property which has an estimated FMV in excess of fifteen thousand dollars (\$15,000.00);
- (ii) any real property that has an estimated FMV in excess of one hundred thousand dollars (\$100,000.00), except that any real property disposed of by lease or exchange shall only be subject to clauses (iii) through (iv) of this Section IV.E;
- (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 (\$15,000.00);
- (iv) 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.

F. If an explanatory statement is required for a negotiated disposition pursuant to Section IV. E above, then, in accordance with Section 2897(d) of the Public Authorities Law in most cases not less than 90 days (or such other period as the statute may later require or be amended to require) prior to the disposal of the Property, such explanatory statement must be transmitted to the persons entitled to receive copies of the report required under Section 2896 of this title, to the state comptroller, state director of the budget, state commissioner of general services and state legislature, and a copy thereof shall be preserved in the files of the SCA.

G. In the event a below fair market value disposition is proposed, then except for Disposals expressly authorized and required by SCA's enabling legislation set forth in Section §1728(11) of the New York Public Authorities Law Section, the following information must be provided to the Board of the SCA 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 Board of the SCA;
- (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 Property 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 paragraph, 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.

Before approving the Disposal of any Property for less than FMV, except for the Disposals expressly authorized and required by SCA's enabling legislation set forth in Section §1728(11) of the New York Public Authorities Law Section, the Board of the SCA shall consider the information described in the above paragraph 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.

V. REPORTING REQUIREMENTS (§ 2896)

A. Annual Report. The SCA shall publish, not less frequently than annually, a report listing all real property of the SCA. 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 SCA and the name of the purchaser for all such property sold by the SCA during such period.

B. Such report, as approved by the Board of the SCA, shall be submitted to the comptroller, the Director of the Budget, the Commissioner of General services and the Legislature in accordance with Title 5-A Article 9 of the New York Public Authorities Law.

C. These Guidelines, as approved by the Board of the SCA, shall be reviewed and approved annually. On or before the thirty-first day of March in each year, the SCA shall file with the Comptroller a copy of the Guidelines most recently reviewed and approved by the Board of the SCA, including the name of the SCA's designated Contracting Officer. At the time of filing such Guidelines with the Comptroller, the SCA shall also post such Guidelines on the SCA's internet website and maintain such Guidelines on the website.

VI. These Guidelines, and amendments, shall take effect on and apply to contracts entered into after the date of approval by the Board of the SCA, except as otherwise provided by law.