

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION:
THE ACQUISITION AND DISPOSITION OF REAL PROPERTY
Board of Directors Meeting
November 7, 2008**

I. Introduction

In accordance with the requirements of Title 5-A of Article 9 and Section 2824(1)(e) of the Public Authorities Law, added to such law by the Public Authorities Accountability Act of 2005 (“PAAA”), the following comprehensive guidelines (“Guidelines”) set forth the New York City Economic Development Corporation (“EDC”) (i) operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property through means of real property sale, ground lease, space lease and roof top lease, (ii) guidelines relating to the acquisition of real property, and (iii) related policies and procedures.

II. Methods of disposing of real property

EDC shall dispose of real property in accordance with Title 5-A and other applicable laws in a manner so as to permit such full and free competition as is appropriate under the circumstances and shall award contracts to parties offering the most advantageous terms, financial and/or otherwise. All dispositions of real property shall further comply with the Deputy Mayor’s Disposition Policy for City-Owned Commercial and Industrial Property, dated April 1994, as amended and to be amended, and such other requirements as may from this time be imposed by the City. The Contracting Officer for real property dispositions shall supervise and direct all dispositions of EDC real property. The real property may be disposed of for not less than fair market value for cash, credit, or other property, with or without warranty, upon such terms and conditions as the Contracting Officer or his/her designee deems proper, except as otherwise permitted herein. No disposition of real property shall be made unless an appraisal has been made by an independent appraiser and included in the EDC file.

Under the Contracting Officer’s or his/her designee’s direction, EDC primarily uses two methods of disposition: Request for Proposals (“RFP”) and negotiated disposition.

RFPs

Real Property Sales and Ground Leases

The RFP process is a process whereby the development community and other entities and individuals are invited to submit proposals for one or more properties. In an effort to create full and free competition consistent with the value and nature of the property, RFPs will be advertised in the City Record and may be advertised in appropriate local newspapers and/or appropriate trade publications, depending on the nature of the property. In addition, RFPs will be posted on EDC’s web-site, and, on occasion, distributed to a direct mailing list. All advertisements shall list when and where

proposals shall be disclosed, except that if the disposition falls within one of the criteria for a negotiated disposition described below, at the discretion of the Contracting Officer or his/her designee, the advertisement may omit such disclosure information and/or the disclosure may or may not be made.

RFPs may, but are not required to, include an introduction and sections on site description, development strategy, objectives, disposition process, proposal requirements, selection conditions, public review process, general conditions and, where appropriate, economic development benefits.

Although the selection criteria for each RFP varies, as appropriate, EDC may include selection criteria such as the following in reviewing submissions and selecting a proposal:

- *Economic Impact on / Spending in New York City* - projected expenditures, including purchase price, construction costs and annual operating costs; temporary (construction) and permanent on-site employment and payroll; and applicable New York City taxes such as real property, sales and personal income taxes.
- *Development Team Qualifications* – experience and development skills to complete the project on time and within budget.
- *Financial Viability* – developer’s financial means to complete the project, availability of funding sources to finance the project, and sufficient use to support operating expenses, capital costs and any debt service.
- *Integration into Surrounding Community* – such as pedestrian access, vehicular access and circulation, building mass, parking availability, landscaping and overall integration into surrounding community.
- *Design* – architectural design, urban design, environmental development techniques, and compliance with applicable zoning, environmental and other regulatory controls.

Depending on the nature of the real property, RFPs may or may not include all of the above and may include additional selection criteria.

The contract will be awarded to the candidate presenting the most advantageous terms, price and other factors considered. EDC may reject the proposals when the minimum terms and conditions have not been met, competition is insufficient and/or it is in the public interest to do so. The award/designation will be made by notice within a reasonable time of the original advertisement, all circumstances considered.

Space Leases and Rooftop Leases

As with real property sales and ground leases, in an effort to create full and free competition consistent with the value and nature of the property, available space will be offered for lease to the public through an RFP advertised in the City Record and may also be offered for lease to the public through an RFP advertised in appropriate local newspapers and/or appropriate trade publications, depending on the nature of the

property. In addition, RFPs will be posted on EDC's web-site, and, on occasion, distributed to a direct mailing list. All advertisements shall list when and where proposals shall be disclosed, except that if the disposition falls within one of the criteria for a negotiated disposition described below, at the discretion of the Contracting Officer or his/her designee, the advertisement may omit such disclosure information and/or the disclosure may or may not be made.

Although the selection criteria for each RFP varies, as appropriate, EDC may use selection criteria such as the following in reviewing submissions and selecting a proposal:

- conforming zoning use
- compliance with EDC policy
- candidate's economic viability
- amount of space to be leased
- term of the lease
- number of jobs to be provided
- projected investment in permanent improvements
- projected impact on economic development, public health, safety, welfare and benefit to the City
- financial return for the life of the lease

Depending on the nature of the real property, RFPs may or may not include all of the above and may include additional selection criteria.

The contract will be awarded to the candidate presenting the most advantageous terms, price and other factors considered. EDC may reject the proposals when the minimum terms and conditions have not been met, competition is insufficient and/or it is in the public interest to do so. The award/designation will be made by notice within a reasonable time of the original advertisement, all circumstances considered.

Negotiated Disposition

Real Property Sales, Ground Leases, Space Leases and Rooftop Leases

RFP by advertisement is not always the most appropriate and effective means of disposal of real property. In certain instances, including when the disposition is for less than fair market value but is intended to further the City's economic development or the disposition is otherwise authorized by law, Title 5-A permits a negotiated disposition subject to obtaining such competition as is feasible under the circumstances. In some circumstances, the disposition will involve a sole source disposition. Title 5-A, Section 2897 (6)(c)(ii)-(vi) sets forth that real property may be disposed of through a negotiated disposition when:

- (ii) the fair market value of the property does not exceed fifteen thousand dollars;

- (iii) 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;
- (iv) 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;
- (v) the disposal is for an amount less than the estimated fair market value of the property, the terms of such disposal are obtained by public auction or negotiation, the disposal of the property is intended to further the public health, safety or welfare or an economic development interest of the state or a political subdivision ..., the purpose and the terms of such disposal are documented in writing and approved by resolution of the board of the public authority; or
- (vi) such action is otherwise authorized by law.

Item (vi) includes, without limitation, sales and leases of real property where the property has been acquired for purposes of disposal under Section 384(b)(4) of the New York City Charter, Section 1411 of the New York State Not-for-Profit Corporation Law or Section 1301(2)(g) of the New York City Charter.

If an RFP involves a disposition that meets one of the criteria described above, the Contracting Officer or his/her designee may direct that the disposition of the real property be considered a negotiated disposition. In such circumstance, a public disclosure of the proposals would not be necessary unless otherwise required but an explanatory statement and 90 days notice (or such other period as the statute may be amended to require) would be required as detailed below.

Upon meeting Title 5-A's requirements for a negotiated disposition, the decision to proceed with a negotiated disposition in a situation where an RFP will not be used is based on an analysis of the facts and nature of the project. In such instance, a negotiated disposition may be undertaken without limitation under the following circumstances where appropriate:

- risk of business relocation or expansion outside the City
- to permit expansion of business in the City
- due to number of jobs to be created or retained
- development of sites which lack private sector interest (as demonstrated by a failed RFP or other competitive means within the past two years)
- proximity of real property to a business' existing location
- to permit a person or entity contemplating the purchase or long term lease of City real property through EDC to lease the property for purposes of investigations and/or work to be undertaken prior to the purchase or long term lease, or
- other important public purpose

Regardless of the reason the negotiated disposition is deemed permissible, such competition as is “feasible” under the circumstances is still required. In some instances where advertisement is not used, EDC might notify neighboring businesses of an available parcel to give them the opportunity to submit a proposal, thereby effecting competition. However, in other instances, even such notification might not be feasible. Realistically, in certain situations a sole source disposition or little competition will be the only feasible alternative. For example, if a lease is for a sum below fair market value and failure to renew could threaten relocation outside the City, loss of jobs or business failure, a sole source negotiated disposition will be permissible under Title 5-A Section 2897(6)(c)(v). So too, if a space is leased at fair market value to a tenant that provides many jobs and services as well as promises future economic development to the community, a sole source negotiated disposition might also be appropriate to preserve the jobs in the City. Similarly, if a tenant requires an adjacent available space to expand his/her business and such expansion would create new jobs and prevent the business from leaving the City, a sole source negotiated disposition at fair market value might also be appropriate. In such instances, a negotiated disposition would be permissible pursuant to Title 5-A Section 2897(6)(c)(vi) in conjunction with Sections 1301(2)(g) and/or 384 (b)(4) of the New York City Charter or other statutory provisions.

If a negotiated disposition is undertaken, not less than 90 days (or such other period as the statute may later require) prior to the disposal of the property, an explanatory statement must be submitted to the state comptroller, state director of the budget, state commissioner of general services and state legislature, a copy of the same to be maintained in EDC’s files.

III. Acquisitions

Real property may be purchased by EDC for purposes of use, resale, leasing or otherwise permitting the use of the property or space therein, and may be leased by EDC for purposes of use, subleasing or assignment of lease or otherwise permitting the use of the leased property or space. The purpose of such acquisition shall be to further a purpose of EDC under Section 1411 of the New York State Not-for-Profit Corporation Law. The Contracting Officer or his/her designee shall approve the terms of the acquisition and obtain the approval of EDC’s Board of Directors for the same. Further, at the discretion of the President of EDC or his/her designees, where EDC has a right of reacquisition of previously disposed of property, it may exercise this right.

IV. Approvals

All purchases, sales and leases of real property by EDC must be approved by its Board of Directors. Approvals may be obtained for specific purchases, sales or leases or the Board of Directors may grant approval to purchases, sales or leases so long as specified guidelines are met. Generally, purchases, sales and leases are first reviewed by the Real Estate Committee of EDC’s Board.

When City property is being leased or purchased by EDC, all City required approvals must also be obtained, e.g., ULURP approvals (Section 197-c of the New York City Charter) and Borough Board and Mayoral approvals under Section 384(b)(4) of the New York City Charter.

V. Monitoring and Reporting Contracts for Disposal

Prior to the disposal of the real property, the project manager involved in the disposition shall be the primary person responsible for the monitoring of compliance with the terms of the contract or other agreement or memorandum for the disposal and shall keep the Contracting Officer or his/her designee informed of all major issues that arise and of the status of the disposition.

The Contracting Officer shall cause a record to be maintained of all real property disposed of and shall cause to be prepared and transmitted all reports relating to the disposition of real property required by Title 5-A.

VI. Contracting Officer

The Executive Vice President who, from time to time, oversees those employees of EDC that are engaged in real estate activities shall be EDC's Contracting Officer for real property dispositions. If there is more than one Executive Vice President who oversees those employees, each of those Executive Vice Presidents shall be considered a Contracting Officer for real property dispositions and may take any action that may be taken by the Contracting Officer.