

**HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY
DISPOSITION OF PROPERTY**

1. Definitions (PAL § 2895)

- (a) “Dispose” or “Disposal” means the “transfer of title or any other beneficial interest in personal or real property,” and
- (b) “Property” means “personal property in excess of \$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.”

2. Duties of the Authority (PAL § 2896)

- (a) Adopt Guidelines: Adopt by resolution, guidelines which must: (i) detail the Authority’s policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of property; and (ii) designate a contracting officer who shall be responsible for the authority’s compliance with, and enforcement of, such guidelines. The guidelines must be consistent with the provisions of the PAAA, the authorities enabling legislation, and any other applicable law for the disposal of property, except that the guidelines may be stricter than the aforementioned if the authority determines that additional safeguards are necessary. The guidelines must be annually reviewed and approved by the governing body of the authority.

On or before the 31st of March in each year, the authority must file with the comptroller a copy of the guidelines most recently reviewed and approved by the authority including the name of the designated contracting officer. The guidelines must be posted on the authority’s website and maintained on such site until the procurement guidelines for the following year are posted.

- (b) maintain adequate inventory controls and accountability systems for all property under its control.
- (c) periodically inventory such property to determine which property shall be disposed of.
- (d) transfer or dispose of such property as promptly as possible.
- (e) Publish not less frequently than annually, a report listing all real property of the public authority. The report must consist of a list and full description of all real and personal property disposed of during the reporting period. The report must contain the price received by the authority and the name of the purchaser for all property sold by the authority during the reporting period. The report must be delivered to the comptroller, the director of the budget, the commissioner of general services, and the legislature.

3. Disposal Requirements (PAL § 2897)

- (a) The contracting officer must have supervision and direction over the disposition of property.
- (b) The custody and control of the property, pending its disposition, and the disposal of such property must be performed by the authority in possession thereof.
- (c) A deed, bill of sale, lease, or other instrument executed by or on behalf of any public authority, purporting to transfer title or any other interest in the property under the provisions of the PAAA shall be conclusive evidence of compliance with the provision of PAAA insofar as it concerns title or other interest of any *bono fide* grantee or transferee who has given valuable consideration for such title or other interest and has not received actual or constructive notice of a lack of such compliance prior to closing.
- (c) The authority must not transfer property for less than FMV (with exception as is set forth in 4(e) and (f), below) and if such property is not subject to fair market pricing due to its unique nature, an appraisal of the value of such property must be made by an independent appraiser and included in the record of the transaction.

4. Procedures for Disposal

- (a) All disposals or contracts for disposal of property must be made after publicly advertising for bids (with exception as discussed, below).
- (b) The advertisement for bids must 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.
- (c) All bids would have to be publicly disclosed at the time and place stated in advertisement.
- (d) The award of bids shall be made with reasonable promptness by notice to be the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the State. Price and other factors may be considered, and all bids may be rejected when it is in the public interest to do so.
- (e) Exceptions to publicly advertising: The disposal and contracts for disposal of property may be negotiated or made by public auction subject to obtaining such competition as is feasible under the circumstances if:
 - (1) the personal property involved is of a nature and quantity which, if disposed of using public bidding advertisement and disclosure, would adversely effect the State or local market for such property, and the estimated FMV of such property and other satisfactory terms of disposal can be obtained by negotiation?
 - (2) the FMV of the property does not exceed \$15,000;
 - (3) bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;

- (4) 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; or
 - (5) such action is otherwise authorized by law.
- (f) Exception to publicly advertising and obtaining FMV: The disposal is for an amount less than the estimated FMV of the property, the terms of such disposal are obtained by public auction or negotiation, 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 (to include but not limited to, the prevention or remediation of substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues, or where the authority's enabling legislation permits), the purpose and the terms of such disposal are documented and approved by the board of the public authority;
- (g) Ninety-day notice of a negotiated disposal: An explanatory statement would have to be prepared and transmitted to the comptroller, the director of the budget, the commissioner of general services, and the legislature at least 90 days in advance of such disposal in instances of disposal by negotiation. where:
- (1) any personal property has an estimated FMV in excess of \$15,000.
 - (2) any real property that has an estimated FMV in excess of \$100,000, except in instances where real property is disposed of by lease or exchange unless such lease or exchange includes:
 - (i) any real property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years;
 - (ii) any real property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of \$100,000; or
 - (iii) 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.

The designated Contracting Officer for the Agency is John J. Piseck.

Approved and adopted March 27, 2008
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