

DISPOSAL OF PROPERTY GUIDELINES
Dutchess County Resource Recovery Agency

(Adopted August 21, 2008)

The Dutchess County Resource Recovery Agency (the "Agency"), a New York public benefit corporation, in compliance with the New York State Public Authorities Law, has established these Guidelines for the Disposal of Property (the "Guidelines") pursuant to and subject to the Public Authorities Law (PAL) Sections 2895, 2896, 2897, and 2047-a through -x. The Agency has adopted these Guidelines to comply with the provisions of New York State Public Authorities Law and to realize a favorable return on the Disposal of Agency Property. These Guidelines shall apply to the Disposal of Real Property and certain Personal Property until such time as the Agency adopts new or revised Guidelines. The Agency's Board of Directors shall review and approve of these Guidelines, with any necessary modifications and revisions, at least annually in accordance with PAL Sec. 2896.

1. Definitions

As used in these Guidelines, the following definitions shall apply:

"Contracting Officer" shall mean the officer or employee of the Agency appointed by resolution of the Agency's Board of Directors to be responsible for the disposition of Property pursuant to these Guidelines.

"Dispose" or "Disposition" shall mean the transfer of title or any other beneficial interest in Personal or Real Property in accordance with Section 2897 of the New York State Public Authorities Law.

"Designated Personal Property" means Personal Property in excess of five thousand dollars (\$5,000) in value, 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.

"Personal Property" means any Property that is moveable, not attached to land, and tangible. Any asset other than real estate that is corporeal.

"Real Property" means lands, structures, franchise, rights and interests in land, waters, lands under water, riparian rights and air rights and any and all things and rights included within said term and includes not only fees simple absolute, but also any and all lesser interests including, but not limited to, easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise.

"GASB Standards" means principles and practices of financial accounting and reporting for U.S. state and local governments issued by the Governmental Accounting Standards Board.

2. Designation of Contracting Officer

A. The Agency hereby designates its *Executive Director* as the Agency's Contracting Officer, in compliance with the provisions of New York State Public Authorities Law. The Contracting Officer shall hold this position until the members of the Agency's Board of Directors designate a new Contracting Officer or until such time as the members adopt new Disposal of Property Guidelines.

B. The Contracting Officer shall be responsible for the administration and implementation of these Guidelines.

C. The Contracting Officer shall: (a) cause a copy of the most recently reviewed and approved Guidelines, and the name of the current Contracting Officer, to be filed with the New York State Comptroller on or before March 31st of each year; (b) cause a copy of the most recently reviewed and approved Guidelines to be posted on the Agency's website at the same time said Guidelines have been filed with the New York State Comptroller; and (c) cause a copy of the most recently reviewed and approved Guidelines to be maintained continuously on the Agency's website until such time as the Guidelines for the following year have been posted to the website.

3. General

A. Application The procedures outlined in these Guidelines shall apply to the Agency's Disposal from time to time of all Personal Property and all interests in Real Property. As used in these Guidelines, "Property" shall include Personal Property and Real Property. Personal and Real Property are distinguished from each other as appropriate in some Sections of these Guidelines.

B. Surplus Designation All Property of the Agency to be disposed of shall require prior to its respective Disposal, a resolution duly adopted by the Agency's Board of Directors declaring said Property as, "Surplus", and authorizing the Disposal of same.

However, before any Property under these Guidelines shall be declared as "Surplus" and subsequently disposed of, the Contracting Officer shall determine with certainty whether said Property is subject to the rights of any bondholders that may have an interest in the Property.

4. Inventory

A. The Agency shall maintain adequate inventory controls and accountability systems for all Real Property owned by or under the Agency's control. The Agency's Contracting Officer shall maintain a detailed list of all Real Property owned by the Agency, or in which the Agency has an interest. The Agency shall at least annually, inventory its Real Property and determine whether any such property should be disposed of.

B. The Agency shall maintain adequate inventory controls and accountability systems for all Personal Property owned by or under the Agency's control. The Agency's Contracting Officer shall ensure compliance with the Agency's inventory control procedure for Personal Property. The Agency shall, at least annually, inventory all Designated Personal Property and determine whether any such property should be disposed of.

- C. The Contracting Officer shall maintain a record of Property disposed of for three (3) years following disposition, or such longer period as may be required by GASB Standards or other applicable retention schedule.

5. Agency Procedure for Real Property

A. Fair Market Value. Prior to its Disposal, the fair market value of all Real Property shall be established by an appraisal conducted by a qualified professional who is a duly-licensed Real Estate appraiser in New York State. Real Property may not be disposed of for less than fair market value except where such Disposal is intended to further the health, safety, welfare or economic development interests of the State or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution pursuant to this Section.

B Advertised Bid

i. Bid Procedures. All Disposals of Real Property shall be made after public advertisement for bids for the purchase of Agency Property, excepting any such Disposals otherwise exempted by the provisions set forth in Section 5(c) or (d) of these Guidelines. The Contracting Officer shall order the advertising for bids in such a manner and in such publications or venues (electronic or otherwise) as the Contracting Officer deems reasonably necessary to permit full and free competition for the Property consistent with the value and nature of the Property. All advertisements for soliciting bids on Real Property shall state the method, place and deadline for the submission of bids, and request any other information the Contracting Officer deems necessary to evaluate bids being solicited. All advertisements and announcements soliciting bids shall state the place and time at which the content of all bids received for the Real Property advertised shall be publicly disclosed. All bids received shall be publicly disclosed as announced in the solicitation for bids.

Bidders shall be required to disclose in their respective bids to purchase Real Property being disposed of by the Agency if they are, or were ever in the two years precedent to the Disposal of said Real Property, an Agency employee or staff member; a regular or ex-officio member of the Agency's Board of Directors; a contractor or paid consultant to the Agency, and shall be required to furnish a non-collusive bidding certificate

Members of the Agency's Board of Directors, the Agency's Executive Director and all other Agency staff and/or employees shall be precluded from bidding on and/or purchasing any Agency Property that the Agency disposes of that is subject to these Guidelines, during their respective tenure on said Board, or tenure as an Agency staff member or employee, and continue to be so precluded for a period thereafter of one year.

Pursuant to Section 2047-q of Title 13-D of the New York State Public Authorities Law (Agency's enabling legislation), it is a misdemeanor for any member of the governing body or any officer, agent, servant or employee of the Agency to be in any way or manner interested, directly or indirectly, in the furnishing or work, materials, supplies or labor, or in any contract therefore which the Agency is empowered by its enabling legislation to make.

ii. Award of Property Subject to Bid

Award of the Real Property for which bids have been solicited shall be made within a timeframe reasonable for the evaluation of the bids received. The Contracting Officer shall evaluate the bids and advise the Agency's Board of Directors as to what bid is the most advantageous to the Agency based upon: (a) conformance with the invitation for bids; (b) the terms, including but not limited to the price offered; and (c) any other factors that warrant consideration. The Agency's Board of Directors by resolution shall then award the Property to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the Authority, price and other factors considered provided that the requirements of all applicable sections of these Guidelines have been adhered to. Notwithstanding the foregoing, the Agency's Board of Directors may reject as inadequate all bids received in response to a particular solicitation for bids if they deem that it is in the best interest of the Agency to reject all bids.

iii. Notification of Successful Bid

The Agency shall notify the successful bidder in writing of the Agency's acceptance of the bid. This notice shall contain a description of the Property, the amount of the successful bid and any other material terms of the bid. The bidder shall be required to make payment to the Agency in a form and on terms acceptable to the Agency before taking possession of the Real Property.

The Agency shall gather the following information regarding any successful bidder: name, address, phone number and disclosure of past relationship to the Agency pursuant to these Guidelines. The Agency shall provide to the successful bidder a deed, bill of sale, lease or other proper and acceptable instrument to transfer interest and ownership in the Property to the successful bidder.

C. Disposal of Real Property by Public Auction

The Agency may Dispose of Real Property by public auction without regard to the above described advertising and bid procedures if the Board upon consideration of the recommendation of the Contracting Officer determines that such disposal is likely to achieve the most advantageous price, or the Disposal of the Property is intended to further the health, safety, welfare or economic development interests of the state or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution, or the fair market value of the Property that is being disposed of does not exceed fifteen thousand dollars (\$15,000).

D. Alternate Disposal of Real Property by Negotiation

i. The Agency may Dispose of Real Property through negotiation without regard to the above described advertising and bid procedures if the Contracting Officer determines that any of the following conditions exist:

(a) introduction into the market of the Real Property to be Disposed of would adversely affect the local market for that kind of Property, and a fair market price and other satisfactory terms for the sale of the Property can be obtained through negotiation;

(b) prices for the Real Property that were obtained by advertised bid were not reasonable or the bid process did not generate open competition;

(c) Disposal of the Real Property to the State or any political subdivision thereof at fair market value can be arranged through negotiation;

(d) if the Real Property is being Disposed of for less than fair market value, the terms of the Disposal have been reached through negotiation, the Disposal of the Real Property is intended to further the health, safety, welfare or economic development interests of the state or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution;

(e) the fair market value of the Real Property that is being disposed of does not exceed fifteen thousand dollars (\$15,000); or

(f) such action is otherwise authorized by law and resolution of the Board.

ii. Documentation of Disposal by Negotiation

The Contracting Officer shall cause to be prepared an explanation of the circumstances of the Disposal when Real Property is disposed of through the negotiation process described in this section, and any of the following are true: (a) Real Property sold has an appraised value in excess of one hundred thousand dollars (\$100,000); (b) Real Property disposed of by lease has been leased for a period of five years or less and the estimated annual fair market rent is in excess of one hundred thousand dollars (\$100,000) for any such year; (c) Real Property disposed of by lease has been leased for a period of more than five years and the total estimated fair market rent over the term of the lease is more than one hundred thousand dollars (\$100,000); (d) the Real Property or Real Property and related Personal Property has been disposed of by exchange; or (e) any part of the consideration for the Real Property disposed of consists of Real Property.

Not less than 90 days in advance of the Disposal, the Contracting Officer shall cause any and all explanatory statements required under this Section to be transmitted to the recipients of the annual report of Dispositions set forth under Section 8 of these Guidelines.

6. Agency Procedure for Disposition of Designated Personal Property

A. Fair Market Value

Before disposing of Personal Property which is Designated Personal Property, the Contracting Officer shall take reasonable measures to determine the fair market value of the Property to be Disposed. Fair market value of Designated Personal Property that is unique in nature and therefore not subject to fair market value pricing shall be determined through an appraisal by a qualified professional. Designated Personal Property may not be disposed of for less than fair market value except where such Disposal is intended to further the health, safety, welfare or economic development interests of the State or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution pursuant to this section.

B. Advertised Bid

i. Bid Procedures. All Disposals of Designated Personal Property shall be made after public advertisement for bids for the purchase of Agency Property, excepting any such Disposals otherwise exempted by the provisions set forth in Section 6(c) or (d) of these Guidelines. The Contracting Officer shall order the advertising for bids in such a manner and in such publications or venues (electronic or otherwise) as the Contracting Officer deems reasonably necessary to permit full and free competition for the Property consistent with the value and nature of the Property. All advertisements for soliciting bids on Agency Property shall state the method, place and deadline for the submission of bids, and request any other information the Contracting Officer deems necessary to evaluate bids being solicited. All advertisements and announcements soliciting bids shall state the place and time at which the content of all bids received for the Property advertised shall be publicly disclosed. The content of all bids received shall be publicly disclosed as announced in the solicitation for bids.

Bidders shall be required to disclose in their respective bids to purchase Property being disposed of by the Agency if they are, or were ever in the two years precedent to the Disposal of said Property, an Agency employee or staff member; a regular or ex-officio member of the Agency's Board of Directors; a contractor or paid consultant to the Agency, and shall be required to furnish a non-collusive bidding certificate.

Members of the Agency's Board of Directors, the Agency's Executive Director and all other Agency staff and/or employees shall be precluded from bidding on and/or purchasing any Property that the Agency disposes of that is subject to these Guidelines hereto, during their respective tenure on said Board, or tenure as an Agency staff member or employee, and continue to be so precluded for a period thereafter of one year.

Pursuant to Section 2047-q of Title 13-D of the New York State Public Authorities Law (Agency's enabling legislation), it is a misdemeanor for any member of the governing body or any officer, agent, servant or employee of the Agency to be in any way or manner interested, directly or indirectly, in the furnishing or work, materials, supplies or labor, or in any contract therefore which the Agency is empowered by its enabling legislation to make.

ii Award of Property Subject to Bid

Award of the Property for which bids have been solicited shall be made within a timeframe reasonable for the evaluation of the bids received. The Contracting Officer shall evaluate the bids and advise the Agency's Board of Directors as to what bid is the most advantageous to the Agency based upon: (a) conformance with the invitation for bids; (b) the terms, including but not limited to the price offered; and (c) any other factors that warrant consideration. The Agency's Board of Directors by resolution shall then award the Property to the responsible bidder whose bid, conforming to the invitation for bids, will be the most advantageous to the Authority, price and other factors considered the requirements of all applicable Sections of these Guidelines have been adhered to. Notwithstanding the foregoing, the Agency's Board of Directors may reject as inadequate all bids received in response to a particular solicitation for bids if they deem that it is in the best interest of the Agency to reject all bids.

iii. Notification of Successful Bid

The Agency shall notify the successful bidder in writing of the Agency's acceptance of the bid. This notice shall contain a description of the Property, the amount of the successful bid and any other material terms of the bid. The bidder shall be required to make payment to the Agency in a form and on terms acceptable to the Agency before taking possession of the Property.

The Agency shall gather the following information regarding any successful bidder: name, address, phone number and disclosure of past relationship to the Agency pursuant to these Guidelines. The Agency shall provide to the successful bidder a bill of sale or other proper and acceptable instrument to transfer interest and ownership in the Property to the successful bidder.

C. Disposal of Designated Personal Property by Auction

The Agency may Dispose of Designated Personal Property by public auction without regard to the above described advertising and bid procedures if the Board upon consideration of the recommendation of the Contracting Officer determines that such disposal is likely to achieve the most advantageous price, or the Disposal of the Property is intended to further the health, safety, welfare or economic development interests of the state or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution, or the fair market value of the Property that is being disposed of does not exceed fifteen thousand dollars (\$15,000).

D. Disposal of Designated Personal Property by Negotiation

(i) Conditions for Negotiation. The Agency may Dispose of Property through negotiation or by public auction without regard to the above described advertising and bid procedures if the Contracting Officer determines that any of the following conditions exist:

(a) the Personal Property is of a nature and quantity which, if disposed of by the advertised bid or public auction, would adversely affect the state or local market for such property, and the estimated fair market value and other satisfactory terms for the sale of the Personal Property can be obtained through negotiation;

(b) prices for the Property that were obtained by advertised bid were not reasonable either as to all or some part of the Property, or the bid process did not generate open competition;

(c) Disposal of the Property to the State or any political subdivision thereof at fair market value and other satisfactory terms of disposal can be arranged through negotiation;

(d) if the Property is being Disposed of for less than fair market value, the terms of the Disposal have been reached through negotiation, the Disposal of the Property is intended to further the health, safety, welfare or economic development interests of the state or any of its political subdivisions, and the Agency's Board of Directors have approved the particular transaction by resolution;

(e) the fair market value of the Property that is being disposed of does not exceed fifteen thousand dollars (\$15,000); or

(f) such action is otherwise authorized by law and resolution of the board.

ii. Documentation of Disposal by Negotiation

The Contracting Officer shall cause to be prepared an explanation of the circumstances of the Disposal when Property is disposed of through the negotiation process described in this Section, and any of the following are true: (a) Personal Property disposed of has an estimated fair market value in excess of fifteen thousand dollars (\$15,000); (b) the Personal Property has been disposed of by exchange; or (c) any part of the consideration for the Property disposed of consists of Real Property.

Not less than 90 days in advance of the Disposal, the Contracting Officer shall cause any and all explanatory statements required under this Section to be transmitted to the recipients of the yearly report of Dispositions set forth under Section of these Guidelines.

E. Procedure if Surplus Equipment is Unsold If, after two unsuccessful attempts, the surplus Personal Property remains unsold, the Agency may negotiate a sale at the best price obtainable, sell it for scrap value, or donate it to a charitable not-for-profit or governmental agency.

F. Use of Property for Trade-in. The Agency may include surplus items as a "trade-in" when replacement goods are purchased, provided that the trade-in value is considered in determining the lowest responsible bid or quote, and the Agency should consider the relative value of the trade-in as compared to the estimated value of the surplus item.

G. Bill of Sale. All Designated Personal Property of the Agency to be disposed of shall require that a Bill of Sale, Acknowledgment, and/or comparable instrument specific and deemed appropriate to the transaction by applicable industry law, regulation, practice or standard, be generated and duly executed between the Agency and the purchaser and/or recipient of said Property. Such document shall include, but not be limited to: (a) the full market value of the Property being sold or transferred on the date that the Property was declared "surplus" by the Agency's Board of Directors; (b) if applicable, the purchase price of the Property being sold; (c) a description of the Property being transferred and/or sold by the Agency that is of sufficient detail so that a reasonable person may be able to readily discern the Property being sold or transferred by the Agency from any other Property that may be of a similar nature, and that the description shall also include any unique identifying numbers that may be assigned or affixed to the Property being sold or transferred by the Agency; (d) any other information, provisions, etc. that may required by applicable law, regulation or industry practice.

7. Disposal of Personal Property other than Designated Personal Property

A. Simplified Procedures. Personal Property which is not Designated Personal Property shall be disposed of in accordance with the following simplified procedures.

- (i) The Agency has, on occasion, the need to sell unneeded, worn-out or obsolete equipment, computers, furniture, machinery, tools, parts and vehicles. The Agency has the discretion to conduct such sales by public auction, competitive bidding, or private negotiation. The option selected should be the one which will bring the best price or the most beneficial terms.
- (ii) If the Contracting Officer determines that equipment identified as surplus has a value less than \$100 in total, the Contracting Officer may sell the same by negotiated sale after obtaining at least one, and preferably two, informal quotes. If no quotes can be obtained or if the item has no real value or the cost of effecting a sale exceeds the limited value, the item may be discarded or sold for scrap in the discretion of the Contracting Officer.
- (iii) If the Contracting Officer determines that equipment identified as surplus has a value of \$100 or greater, but less than \$5,000, the Contracting Officer may proceed with its sale after documenting estimated fair value based on published sources, informal appraisal, or other sources deemed reliable. If three or more offers, quotes, or bids are received, the Contracting Officer may proceed with the sale. If three or more bids are not received, a second solicitation shall be conducted. If no offers are received from a second solicitation, the equipment may be sold by private negotiation at the best price obtainable.
- (iv) When practical and to promote competition and reduce advertising costs, the Agency should encourage aggregating surplus items and equipment for sale by means of auction, competitive bid, or negotiated sale.
- (v) All purchasers shall be required to disclose if they are, or were ever in the two years precedent to the Disposal of said Property, an Agency employee or staff member; a regular or ex-officio member of the Agency's Board of Directors; a contractor or paid consultant to the Agency, and shall be required to furnish a non-collusive bidding certificate
- (vi) Members of the Agency's Board of Directors, the Agency's Executive Director and all other Agency staff and/or employees shall be precluded from bidding on and/or purchasing any Property that the Agency disposes of that is subject to these Guidelines, during their respective tenure on said Board, or tenure as an Agency staff member or employee, and continue to be so precluded for a period thereafter of one year.

B. Designated Property Procedures May be Required. Notwithstanding subdivision A, upon determination of the Contracting Officer's or at the Board's direction, Personal Property which is not Designated Personal Property shall be disposed of in accordance with procedures for Designated Personal Property.

8. Periodic Property Reports

Each year the Contracting Officer shall publish a report listing all Real Property of the Agency, and listing all Real Property and Designated Personal Property disposed of by the Agency during the previous calendar year. The report shall contain a full description

of each item of Property disposed of, the price received by the Agency, and the name of the individual(s) or entity that purchased the Property.

The Contracting Officer shall cause a copy of the report to be delivered to the New York State Comptroller, New York State Director of the Budget, New York State Commissioner of General Services, and the New York State Legislature c/o the Speaker of the House and the Senate Majority Leader by the thirty-first of March of the year that immediately follows the period of time covered by the report.

The Contracting Officer shall cause the report to be published on the Agency's website at the same time said report is delivered to the New York State Comptroller and others as set forth in the paragraph above.

All required annual reports shall be provided to the Agency Board at least ten (10) business days prior to submission.

The Contracting Officers shall report at least quarterly to the Finance Committee the current list of surplus property and estimated value, if any, and summarizing all disposal activity during such period.

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