

Adopted: April 17, 2009  
Amended: August 20, 2010  
Amended: February 10, 2017

## **ORLEANS LAND RESTORATION CORPORATION PROPERTY DISPOSAL GUIDELINES**

The Orleans Land Restoration Corporation (the “Corporation”), a New York not-for-profit corporation, in compliance with the New York State Public Authorities Law, to the extent that the same applies to the Corporation, has established these Guidelines for the Disposal of Property (the “Guidelines”).

These Guidelines shall apply to the disposal of real property and personal property throughout the year following their adoption and until such time as the Corporation adopts new or revised Guidelines. The Members of the Corporation shall review and approve of these Guidelines, with any necessary modifications and revisions, on a no less than annual basis.

### **1. Designation of Contracting Officer**

The Corporation hereby designates the Chief Financial Officer of the Corporation as the Corporation’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 Corporation designate a new Contracting Officer or until such time as the Members adopt new Property Disposal Guidelines.

The Contracting Officer shall be responsible for the administration and implementation of these Guidelines. The Contracting Officer shall cause these Guidelines to be posted on the Corporation’s website so that they are available to the general public.

### **2. Application of Guidelines**

The procedures outlined in these Guidelines shall apply to the Corporation’s disposal from time to time of all personal property having a fair market value at the time of disposal of more than five thousand dollars (\$5,000) and all interests in real property. As used in these Guidelines, “property” shall include personal 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, but shall exclude an interest securing a loan or other financial obligation of another party. Personal and real property are distinguished from each other as appropriate in some Sections of these Guidelines.

The Corporation shall endeavor to dispose of personal property with a fair market value at the time of disposal of Five Thousand Dollars (\$5,000.00) or less for at least fair market value.

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### **3. Purpose**

The Corporation has adopted these Guidelines to comply with the provisions of NYS Public Authorities Law and to realize a favorable return on the disposal of Corporation property.

### **4. Fair Market Value**

Before disposing of property, the Contracting Officer shall take reasonable measures to determine the fair market value of the property to be disposed of. Fair market value of 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 and therefore not subject to fair market value pricing, shall be determined through an appraisal by a qualified independent appraiser which shall be included in the record of the transaction. Prior to its disposal, the fair market value of all real property shall be established by an appraisal conducted by a qualified independent appraiser and included in the record of the transaction.

### **5. Advertised Bid**

All disposals of Corporation property shall be made after public advertisement for bids for the purchase of Corporation property. The Contracting Officer shall order the advertising for bids in such a manner and in such publications as the Contracting Officer deems reasonably necessary to permit full and fair competition for the property consistent with the fair market value and nature of the property.

All advertisements for soliciting bids on Corporation 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.

### **6. 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 select the bid most advantageous to the Corporation 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.

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Notwithstanding the foregoing, the Corporation may reject as inadequate all bids received in response to a particular solicitation for bids if the Contracting Officer deems that it is in the best interest of the Corporation to reject all bids.

## **7. Notification of Successful Bid**

The Corporation shall notify the successful bidder in writing of the Corporation'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 Corporation Treasurer in a form and on terms acceptable to the Corporation before taking possession of the property.

The Corporation shall gather the following information regarding any successful bidder: name, address, and telephone number.

The Corporation shall provide to the successful bidder a deed, bill of sale, lease or other appropriate instrument adequate to transfer to the successful bidder the interest in the property.

## **8. Contracts to Dispose of Property**

The Corporation may solicit bids for contracts to dispose of the Corporation property covered by these Guidelines. In the event that the Corporation determines that the services of a company are necessary to assist the Corporation in disposing of certain of its property, the Corporation shall follow the same procedures in selecting an organization to dispose of property as the Corporation follows under these Guidelines for disposal of property through advertised bid.

## **9. Disposal of Property by Negotiation**

The Corporation may dispose of property through negotiation or by public auction without regard to the above described procedures if the Contracting Officer determines that any of the following conditions exist:

- (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 or similar effect, that would tend to increase its value, or if the personal property is to be sold in such quantity that, if it were sold through public bidding, it would adversely affect the local market for that kind of property, and the estimated fair market price and other terms for the sale of the personal property can be obtained through negotiation;
- (b) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);
- (c) prices for the property that were obtained by advertised bid were not reasonable or the bid process did not generate open competition;

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- (d) disposal of the property will be to the State or any political subdivision and the estimated fair market value and other satisfactory terms of disposal are arranged through negotiation;
- (e) under circumstances permitted under Section 10 of these Guidelines; or
- (f) such action is otherwise authorized by law.

## **10. Disposal of Property for Less Than Fair Market Value**

- (a) No asset owned, leased or otherwise in the control of the Corporation may be sold, leased or otherwise alienated for less than its fair market value except if:
  - (i) 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;
  - (ii) The purpose of the transfer is within the purpose, mission or governing statute of the Corporation; or
  - (iii) In the event the Corporation 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 mission, purpose or governing statutes, the Corporation shall provide written notification thereof to the Governor, the Speaker of the Assembly and the temporary President of the Senate, and such proposed 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 by such House. The Governor and each House of the Legislature shall take any such action within sixty (60) days of receiving notification of such proposed transfer during the months of January through June, provided that if the Legislature receives notification of a proposed transfer during the months of July through December, the Legislature may take any such action within sixty (60) days of January first of the following year. If no such resolution or certification is performed within sixty (60) days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Corporation may effectuate such a transfer. Any of the foregoing notwithstanding, with respect to a below market transfer by the Corporation that is not within the purpose, mission or governing statute of the Corporation, if the New York Not-For-Profit Corporation Law provides for the approval of such transfer by the Orleans County Legislature and the transfer is of property obtained by the Corporation from Orleans County, then such approval shall be sufficient to permit the transfer.
- (b) In the event a below fair market value asset transfer is proposed, the following information must be provided to the Corporation's Board 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;
  - (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,

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including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, and the benefits, if any, to the communities in which the asset 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.
- (c) Before approving the disposal of any property for less than fair market value, the Board of the Corporation shall consider the information described in paragraph (b) of this Section 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.
- (d) In the event property is disposed of for less than fair market value, the Corporation shall include in its annual report required under Section 2800(2) of the Public Authorities Law a detailed explanation of the justification for making the sale without competitive bidding and a certification by the CEO and CFO of the Corporation that they have reviewed the terms of the sale and determined that it complies with applicable law and these guidelines.

## **11. 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 Section 9, 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) real property disposed of has an estimated fair market value in excess of one hundred thousand dollars (\$100,000.00), except that real property disposed of by lease or exchange shall only be subject to clauses (c) and (d) below;
- (c) real property leased if the estimated annual fair market rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000.00);
- (d) any real property or real and related personal property disposed by exchange, regardless of value, or any property any part of the consideration for which is real property.

The Contracting Officer shall cause any and all explanatory statements required under this Section 11 to be transmitted at least ninety (90) days in advance of disposal by negotiation to the recipients of the yearly report of dispositions required under Section 12 of these Guidelines and shall maintain a copy of such statement in the Corporation's file.

## **12. Yearly Property Report**

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Each year the Contracting Officer shall publish a report listing all real and personal property disposed of by the Corporation during the previous twelve-month period. The report shall contain a full description of each item of property disposed of, the price received by the Authority, and the name of the individual(s) or entity that purchased the property.

The Contracting Officer shall cause the report to be delivered to the Comptroller, the Director of the Budget, the Commissioner of General Services, and the New York State Legislature c/o the Speaker of the House and the Senate Majority Leader.

The Contracting Officer shall cause the report to be published on the Corporation's website.