

**NYC NEIGHBORHOOD CAPITAL CORPORATION
POLICY FOR THE ACQUISITION AND DISPOSITION OF REAL PROPERTY**

Adopted June 26, 2019

I. Introduction

In accordance with the requirements of Title 5-A of Article 9 of the Public Authorities Law and Section 2824(1)(e) of the Public Authorities Law, the following comprehensive guidelines (“Guidelines”) set forth for the NYC Neighborhood Capital Corporation (“NYCNCC”) (a) the 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, (b) the guidelines relating to the acquisition of real property and (c) related policies and procedures.

II. Methods of disposing of real property

NYCNCC shall dispose of real property in accordance with Title 5-A of Article 9 of the Public Authorities Law 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. The Contracting Officer (see Part VI below) for real property dispositions, appointed by NYCNCC’s Board of Directors (the “Board”), shall supervise and direct all dispositions of NYCNCC 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 whose written report will be included in the NYCNCC file. To the extent reasonably feasible, the appraisal shall be dated within twelve months of the date on which NYCNCC enters into a contract to dispose of the real property. The independent appraiser must be a New York State Certified General Real Estate Appraiser and may not be an entity owned or controlled by NYCNCC, the City of New York, New York City Economic Development Corporation, the prospective purchaser/lessee or any of their respective affiliates. An appraisal meeting the foregoing requirements is referred to herein as a “Conforming Appraisal”. Before approving the disposal of any real property the Board shall be advised of the date of the Conforming Appraisal.

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

A. RFPs

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 shall be advertised through the internet and in local newspapers, including community-based newspapers, in multi-language publications and/or in trade publications, where appropriate given the nature of the property. In addition, RFPs shall be posted on NYCNCC's website (or the portion of another entity's website devoted to NYCNCC), 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, the advertisement may omit such disclosure information and/or the disclosure may or may not be made. The Contracting Officer shall approve the location of all advertisements and postings and any omission of disclosure information.

RFPs for real property sales and ground leases may, but are not required to, include an introduction and sections on development strategy, objectives, disposition process, public review process, general conditions and, where appropriate, economic development benefits. All RFPs for real property sales and ground leases must include a site description, proposal requirements and selection criteria.

Although the selection criteria as appropriate for each RFP varies, as appropriate, NYCNCC will include, where appropriate, at least the following selection criteria 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; projected temporary (construction) and permanent on-site employment and payroll; projected applicable New York City taxes such as real property, sales and personal income taxes; and the extent, if any, to which the proposed project will create additional sources of revenue to the City;
- *Development Team Qualifications* – experience and development skills to complete the proposed project on time and within budget, for which experience in completing projects of a similar nature and scope as is contemplated by the RFP shall be taken into account;
- *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* – environmental issues 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;
- *MWBE Participation* – participation by minority-owned and women-owned businesses; and
- *Purpose* – whether the project involves an industry or activity which the City of New York seeks to retain and foster and conforms with NYCNCC's mission.

Depending on the nature of the real property, RFPs may include additional selection criteria deemed appropriate by the Contracting Officer or NYCNCC's Executive Director.

With regard to an RFP for a real property sale or ground lease, NYCNCC shall notify the City Council Member and Community Board whose districts include the property, that an RFP is being issued.

The contract will be awarded to the candidate presenting the most advantageous terms, price and other factors considered in connection with the criteria enumerated in the RFP. NYCNCC 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.

B. Negotiated Disposition

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 the purpose of the disposition is within NYCNCC's purpose, mission or governing statute or the disposition is otherwise authorized by law, Title 5-A of Article 9 of the Public Authorities Law 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. Section 2897(6)(c)(ii)-(vi) and Section 2897(7) of the Public Authorities Law set forth that real property may be disposed of through a negotiated disposition when:

- (i) the fair market value of the property does not exceed fifteen thousand dollars;
- (ii) 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;
- (iii) 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;
- (iv) the disposal is for an amount less than the fair market value 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 NYCNCC, or (c) in the event NYCNCC 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

NYCNCC's mission, purpose or governing statutes, NYCNCC 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 NYCNCC that is not within the purpose, mission or governing statute of NYCNCC, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which NYCNCC resides, and the transfer is of property obtained by NYCNCC from that political subdivision, then such approval shall be sufficient to permit the transfer; or

(v) such action is otherwise authorized by law.

In the event a below fair market value asset transfer (pursuant to an RFP or negotiated disposition) is proposed to NYCNCC's Board for approval, the following information must be provided to NYCNCC's Board and to the public:

1. a full description of the asset;
2. a Conforming Appraisal of fair market value and any other information establishing fair market value as may be sought by the Board;
3. 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 asset is situated as are required by the transfer;
4. a statement of the value to be received compared to the fair market value;
5. the names of any private parties participating in the transfer, and if different than the statement required by subparagraph "4" of this paragraph, a statement of the value to the private party; and
6. 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 fair market value, the Board 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. The Contracting Officer shall provide such supplemental information as the Board may require.

If an RFP involves a disposition that meets one of the criteria described above for negotiated dispositions, 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, based upon a written assessment of such risks;
- 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; or
- other important public purposes.

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, NYCNCC 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 that is below fair market value and failure to renew could threaten relocation outside the City of New York, loss of jobs or business failure, a sole source negotiated disposition will be permissible under Section 2897(6)(c)(v) of the Public Authorities Law. 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 of New York. 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 of New York, a sole source negotiated disposition at fair market value might also be appropriate. In cases where a sole source disposition is presented to NYCNCC's Board for approval, the Board should be informed of the justification for doing a sole source.

If a negotiated disposition is undertaken, 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) 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 NYCNCC's files.

III. Acquisitions of Real Property

Real property may be purchased by NYCNCC for purposes of use, resale, leasing or otherwise permitting the use of the property or space therein, and may be leased by NYCNCC 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 NYCNCC. Except for acquisitions arising out of the enforcement of remedies (including rights of reacquisition), the following requirements shall apply to acquisitions by NYCNCC. The Contracting Officer or his/her designee shall approve the terms of the acquisition and obtain the approval of the Board for the same. In NYCNCC's consideration of the acquisition of real property for the reasons enumerated above, the following information must be provided to the Board:

1. a full description of the real property;
2. a Conforming Appraisal of the fair market value and any other information establishing fair market value as may be sought by the Board;
3. a description of the purpose of the acquisition, and a reasonable statement of the kind and amount of the benefit to the public resulting from such acquisition, such as the kind, number, location, wages, or salaries of jobs created or preserved as required by the acquisition, the benefits, if any, to the communities in which the property is situated as are required by the acquisition;
4. a statement of the acquisition costs as compared to the fair market value, if such acquisition costs are above the fair market value; and
5. the names of any private parties participating in the acquisition; and
6. any known environmental issues.

IV. Approvals

All purchases, sales and leases of real property by NYCNCC (except for those arising out of the enforcement of remedies, including exercises of rights of reacquisition) must be approved by its Board. Approvals may be obtained for specific purchases, sales or leases or the Board may grant approval to purchases, sales or leases in accordance with Board-approved guidelines.

V. Monitoring and Reporting Contracts for Disposal of Real Property

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. Appointment of Contracting Officer

By adopting this Policy for the Acquisition and Disposition of Real Property, the Board appoints the Executive Vice President who, from time to time, oversees those employees of New York City Economic Development Corporation that are engaged in real estate activities as NYCNCC'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.