

**BROOKLYN BRIDGE PARK CORPORATION  
POLICY ON THE ACQUISITION AND DISPOSITION OF REAL PROPERTY**

**Board of Directors Meeting**

**February 29, 2012**

**I. Introduction**

In accordance with the requirements of Title 5-A of Article 9 of the Public Authorities Law ("Title 5-A"), added to such law by the Public Authorities Accountability Act of 2005 ("PAAA"), as amended, the following comprehensive guidelines ("Guidelines") set forth the following policies and procedures of Brooklyn Bridge Park Corporation ("BBP"): (i) 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, (ii) guidelines relating to the acquisition of real property, and (iii) related policies and procedures.

**II. Methods of disposing of real property**

BBP 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. The Contracting Officer for real property dispositions shall supervise and direct all dispositions of BBP 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 BBP file. The independent appraiser must be a New York State Certified General Real Estate Appraiser and may not be an entity owned or controlled by the City of New York (the "City"), BBP or the prospective purchaser or lessee or any of their affiliates.

Under the Contracting Officer's or his/her designee's direction, BBP 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. In addition, RFPs may be posted on BBP's web-site, and, on occasion, distributed to a direct mailing list.

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, development controls and guidelines,

public review process, and general conditions. All RFPs for real property sales and ground leases must include a site description, proposal requirements and selection criteria.

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

- *Rent Offer* – proposed lease payments
- *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.
- *Relationship to the Surrounding Community* – such as pedestrian access, vehicular access and circulation, building mass, parking availability, landscaping and overall integration into surrounding community and park.
- *Design* – architectural design, urban design, environmental development techniques, and compliance with applicable land use restrictions, 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. BBP 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 may be posted on BBP’s web-site, and, on occasion, distributed to a direct mailing list.

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

- conforming use with applicable land use restrictions
- compliance with BBP policy
- candidate’s economic viability
- amount of space to be leased
- term of the lease
- projected investment in permanent improvements
- projected impact on park development and benefit to the Park
- 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. BBP 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 the purpose of the disposition is within BBP's purpose, mission or governing statute 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, Sections 2897 (6)(c)(ii)-(vi) and 2897(7) set 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 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 BBP; or (c) in the event BBP 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 BBP's mission, purpose or governing statutes, BBP 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 BBP that is not within the purpose, mission or governing statute of BBP, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which BBP resides, and the transfer is of property obtained by BBP from that political subdivision, then such approval shall be sufficient to permit the transfer; or
- (vi) such action is otherwise authorized by law.

If a proposed disposition meets one of the criteria described above for a negotiated disposition, the Contracting Officer or his/her designee may direct that the disposition of the real property be considered a negotiated disposition. In such circumstance, 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:

- to further the enjoyment and /or benefit to the public using the Park, or
- to further the purpose, mission or governing statute of BBP 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, BBP 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. In cases where a sole source disposition is presented to BBP's Board of Directors 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 BBP's files.

### **Below Fair Market Value Dispositions**

Title 5A requires that in the event a below fair market value asset transfer (pursuant to an RFP or negotiated disposition) is proposed to BBP's Board of Directors, the following information must be provided to BBP's Board of Directors 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, ;
- (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.

Before approving the disposal of any property for less than fair market value, the Board of Directors of BBP 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.

### **III. Acquisitions**

Real property may be acquired by BBP for purposes of use, resale, leasing or otherwise permitting the use of the property or space therein, and may be leased by BBP 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 the purpose, mission or governing statute of BBP. The Contracting Officer or his/her designee shall approve the terms of the acquisition and obtain the approval of BBP's Board of Directors for the same. Further, at the discretion of the President of BBP or his/her designees, where BBP 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 BBP must be approved by its Board of Directors by the number of votes required by Section 509 of the New York State Not-for-Profit Corporation Law. 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.

### **V. Monitoring and Reporting Contracts for Disposal**

Prior to the disposal of the real property, the project manager or other authorized employee involved in the disposition shall be the primary person responsible for the monitoring of compliance with the policies and procedures, the RFP, 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 General Counsel of BBP, or such other officer or employee of BBP as shall be appointed by resolution of BBP's Board, shall be the Contracting Officer and shall serve in such position until the appointment of his or her successor, or until his or her prior death, resignation or removal.