



Brooklyn Navy Yard  
Development Corporation  
BrooklynNavyYard.org

Building 77  
141 Flushing Ave, Suite 801  
Brooklyn, NY 11205

Readopted December 9, 2020

# Real Property Acquisition and Disposition Policy

## I. Introduction

In accordance with the requirements of Title 5-A of Article 9 and Section 2824(1)(e) 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 Navy Yard Development Corporation (“BNYDC”): (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 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

BNYDC 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 BNYDC 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 its designee deems proper, except as otherwise permitted herein. No disposition of real property shall be made unless an appraisal shall have been made by an independent appraiser and included in BNYDC’s file. Such appraisal shall either be (i) a direct appraisal of the real property interest to be disposed, or (ii) in connection with certain space leases within buildings, pursuant to the then current BNYDC Board of Director approved rent guidelines for such building, with such rent guidelines being established through an appraisal of such building. To the extent reasonably feasible, appraisals for real property sales and ground leases, as well as building-wide appraisals used for certain space leases, shall be dated within twenty-four months of the date on which BNYDC enters into a contract or lease for the disposal of such real property interest. The independent appraisers used for any such appraisals must be New York State Certified General Real Estate Appraisers and may not be entities or controlled by the City of New York (the “City”), BNYDC or the prospective purchasers or lessees or any of their affiliates. To the extent feasible, before approving the disposal of any real property the Board shall be advised of the date of the appraisal.

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



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## *RFPs*

### *Real Property 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 BNYDC's website, 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 or its designee, the advertisement may omit such disclosure information and/or the disclosure may or may not be made. The Contracting Officer or its designee shall approve the location of all advertisements and postings and any omission of disclosure information.

RFPs for real property 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, general conditions, and, where appropriate, economic development benefits. All RFPs for real property ground leases must include a site description, proposal requirements and selection criteria.

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

- Jobs – job density, wages/benefits, use of BNYDC Employment Center, projected temporary (construction) and permanent on-site employment and payroll.
- Purpose – whether the project involves an industry or activity which BNYDC seeks to retain and foster and conforms to BNYDC's mission, including, but not limited to relationship to the surrounding community and participation by minority-owned and women-owned businesses.
- Development Team or Tenant Qualifications – experience and development skills to complete the proposed project on time and within budget, for which experience in completing projects of similar nature and scope as is contemplated by the RFP shall be considered.
- Financial Viability – developer's or tenant'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.
- Tenant Offer – proposed lease payments, term of the lease.
- Design – architectural design, urban design, environmental development techniques, and compliance with applicable land use restrictions, environmental and other regulatory controls.
- Tenancy History – payment history, compliance with BNYDC rules and regulations.



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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 and/or lease 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. BNYDC 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.

#### Space Leases and Rooftop Leases

As with real property 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. One option is through an RFP advertised in the City Record and potentially through other means such as through advertisements in appropriate local newspapers and/or appropriate trade publications, depending on the nature of the property. RFPs may also be posted on BNYDC's website, and, on occasion, distributed to a direct mailing list. BNYDC may in addition to or in-lieu of issuing RFP's for such spaces, directly advertise such spaces in appropriate local newspapers and/or appropriate trade publications, or list such spaces for lease through the use of third-party leasing brokers.

Although the selection criteria for a proposed space lease tenant will vary from property to property, as appropriate, BNYDC may use selection criteria such as the following in reviewing proposed tenant submissions:

- Jobs – job density, wages/benefits, use of BNYDC Employment Center)
- Purpose – alignment with mission of BNYDC, including, but not limited to industrial uses and MWBE status
- financial return for the life of the lease.
- Design – projected investment in permanent improvements, compliance with applicable land use restrictions, environmental and other regulatory controls.
- Financial Viability – tenant's economic viability
- Tenancy History – payment history, compliance with BNYDC rules and regulations.
- Tenant Offer – proposed lease payments, term of the lease, amount of space to lease.

Depending on the nature of the real property, the selection for any particular space may not include all of the above or may include additional selection criteria.

The lease will be awarded to the proposed tenant presenting the most advantageous terms, price and other factors considered. BNYDC may reject all lease 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.



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### *Negotiated Disposition*

#### *Real Property Ground Leases, Space Leases and Rooftop Leases*

Soliciting proposed tenants through an RFP by advertisement, or through other direct advertising methods for space leases described above is not always the most appropriate and effective means of leasing real property. In certain instances, including when the lease rent will be for less than fair market value but the purpose of the disposition is within BNYDC'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 BNYDC; or (c) in the event BNYDC 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 BNYDC's mission, purpose or governing statutes, BNYDC 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 BNYDC that is not within the purpose, mission or governing statute of BNYDC, if the governing statute provides for the approval of such transfer by the executive and legislative branches of the political subdivision in which BNYDC resides, and the transfer is of property obtained by BNYDC from that political subdivision, then such approval shall be sufficient to permit the transfer; or (vi) such action is otherwise authorized by law. Item (vi) includes, without limitation, sales and leases of real property where the property has been acquired for purposes of disposal under Section 384(b)(4) of the New York City Charter, Section 1411 of the New York State Not-for-Profit Corporation Law or Section 1301(2)(g) of the New York City Charter.



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If a proposed disposition meets one of the criteria described above for a negotiated disposition, the Contracting Officer or its 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 BNYDC, based upon a written assessment of such risks; or
- to permit expansion of business within the mission of BNYDC in the Brooklyn Navy Yard; or
- due to the number of jobs; or
- proximity of real property to a business's existing location; or
- to further the purpose, mission or governing statute of BNYDC;
- 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, BNYDC 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 such instances, a negotiated disposition would be permissible pursuant to Title 5-A Section 2897(6)(c)(vi) in conjunction with Sections 1301(2)(g) and/or 384(b)(4) of the New York City Charter or other statutory provisions and pursuant to Title 5-A Section 2897(6)(c)(v). In cases where a sole source disposition for any lease is presented to BNYDC'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(6)(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, the state legislature and the authorities budget office, a copy of the same to be maintained in BNYDC's files.



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### Below Fair Market Value Dispositions

In the event a below fair market value asset transfer (pursuant to an advertised process or Negotiated Disposition) is proposed to BNYDC's Board of Directors, the following information must be provided to BNYDC's Board of Directors and the public:

- (i) a full description of the asset;
- (ii) an appraisal of fair market value 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, 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;
- (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, if any, 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 BNYDC shall consider the information described in the above paragraph and in the case of any lease, 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 or its designee shall provide such supplemental information as the Board may require.

### III. Acquisitions

Real property may be acquired by BNYDC for purposes of use, leasing or otherwise permitting the use of the property or space therein, and may be leased by BNYDC 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 or mission of BNYDC under New York State Not-for-Profit Corporation Law. The Contracting Officer or its designee shall approve the terms of the acquisition and obtain the approval of BNYDC's Board of Directors for the same.

In BNYDC's consideration of the acquisitions of real property, for the reasons enumerated above, the following information must be provided to the Board:

1. a description of the real property;
2. any information establishing fair market value as may be sought by the Board;



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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;
5. the names of any private parties participating in the acquisition; and
6. any known environmental issues.

Further, at the discretion of the President of BNYDC or his/her designees, where BNYDC has a right of reacquisition of previously disposed of property, it may exercise this right.

#### IV. Approvals

All purchases and leases of real property by BNYDC 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 or leases or the Board of Directors may grant approval to purchases or leases so long as specified guidelines are met. Minutes reflecting the Board of Director approvals of all leases to be entered into by BNYDC will be posted on the BNYDC website.

#### 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 its designee informed of all major issues that arise and of the status of the disposition.

The Contracting Officer or its designee 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 BNYDC, or such other officer or employee of BNYDC as shall be appointed by resolution of BNYDC'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.