

# WESTERN FINGER LAKES SOLID WASTE MANAGEMENT AUTHORITY

## PROPERTY DISPOSAL GUIDELINES

(Adopted October 25, 2010)

The Western Finger Lakes Solid Waste Management Authority (the “Authority”), a New York public benefit corporation, in compliance with Title 5-A of Article 9 of the Public Authorities Law, as amended, (the “Act”) has established these Guidelines for the Disposal of Property (the “Guidelines”) of the Authority.

These Guidelines shall apply to the disposal of real property and personal property, as specified herein, until such time as the Authority adopts new or revised Guidelines. The Members of the Authority shall annually review and approve of these Guidelines, with any necessary modifications and revisions, and shall file with the Comptroller a copy hereof, identifying the name of the Contracting Officer specified below, on or before the 31<sup>st</sup> day of March in each year.

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

In compliance with the provisions of the Act, the Authority hereby designates its Administrator as the Authority’s Contracting Officer. The Contracting Officer shall hold this position until the Members of the Authority designate a new Contracting Officer or until such time as the Members adopt revised 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 Authority’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 Authority’s disposal from time to time of (a) all personal property having a fair market value at the time of disposal of more than five thousand dollars (\$5,000) and (b) any and all interests in real property.

The Authority shall dispose of personal property with a fair market value at the time of disposal of five thousand dollars (\$5,000.00) or less under the terms of the Authority's policy for tracking and disposal of fixed assets.

### **3. Purpose**

The Authority has adopted these Guidelines to comply with the provisions of the Act and of the Authority's enabling legislation (Chapter 627 of the Laws of 1986, as amended), and to assure the integrity of its disposition activities.

### **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. The fair market value of (a) all real property or any interest therein and (b) any other property that 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, shall be determined through an appraisal by a qualified professional. Except as provided at Section 13 of these Guidelines, property shall not be disposed of by the Authority for less than its fair market value.

### **5. Advertised Bid**

Except as provided at Section 8 of these Guidelines, all disposals or contracts for disposal of Authority property shall be made after publicly advertising for bids. 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 free competition for the property consistent with the fair market value and nature of the property.

All advertisements for soliciting bids on Authority 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.

The disposition of real property or any interest therein having a fair market value in excess of \$15,000 shall also comply with the Authority's Procurement Policy, as applicable.

**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 Authority 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.

Notwithstanding the foregoing, the Authority may reject as inadequate any and all bids received in response to a particular solicitation for bids whenever the Contracting Officer deems that such rejection would be in the best interest of the Authority.

**7. Notification of Successful Bid**

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

The Authority shall gather the following information regarding any successful bidder: name, address, phone number and any other information required by the Authority's Procurement Policy, as applicable.

The Authority 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. Disposal of property by Negotiation or by Public Auction**

The Authority may dispose or contract for the disposal 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 of 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 disposed of by advertised bid, would adversely affect the local market for such property, and the estimated fair market value of such property and other satisfactory terms of disposal can be obtained by negotiation;
- (b) the fair market value of the property does not exceed fifteen thousand dollars (\$15,000);
- (c) bid prices after advertising therefore are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition;
- (d) the disposal of the property 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; or
- (e) under those circumstances permitted by Section 13 of these Guidelines; or
- (f) such action is otherwise authorized by law.

## **9. 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 8, 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 has an appraised value in excess of one hundred thousand dollars (\$100,000);
- (c) real property has been leased and the estimated annual rent over the term of the lease is in excess of fifteen thousand dollars (\$15,000);
- (d) real property or real and related personal has been disposed of by exchange, regardless of value; or
- (e) 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 10 to be transmitted to the recipients of the yearly report of dispositions required under Section 12 of these Guidelines at least ninety (90) days in advance of such disposal.

#### **11. Sales by the Commissioner of General Services**

The Authority may also enter into an agreement with the Commissioner of General Services pursuant to which the Commissioner may dispose of property of the Authority under terms and conditions agreed to by the parties and in accordance with the Act.

#### **12. Yearly Property Report**

Each year, on or before the 31<sup>st</sup> day of March, the Contracting Officer shall publish a report listing all real property owned by the Authority regardless of value. In addition, the report shall identify (a) any real property that the Authority intends to dispose or (b) did dispose of during the year, indicating its estimated fair market value, the price received by the Authority and the name of the individual or entity that purchased the property. The report shall also include a list of all personal property with a value greater than or equal to \$5,000 that the Authority disposed of during the year, together with the price received by the Authority and the name of the individual or entity that purchased the property.

The Contracting Officer shall cause the report to be delivered to the Comptroller, Director of the Budget, Commissioner of General Services, Legislature and Authority Budget Office.

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

- (a) No asset owned, leased or otherwise in the control of the Authority 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 Authority; or
  - (iii) in the event that the Authority 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 Authority's mission, purpose or governing statutes, the Authority 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 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 days of January first of the following year. If no such resolution or certification is performed within sixty days of such notification of the proposed transfer to the Governor, Senate, and Assembly, the Authority may effectuate such transfer. Provided, however, that with respect to a below market transfer by the Authority that is not within the purpose, mission or governing statute of the Authority, if the governing statute provides for the approval of such transfer by the

executive and legislative branches of the political subdivision in which the Authority resides, and the transfer is of property obtained by the Authority from that political subdivision, 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 Authority 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, 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 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 Authority shall consider the information described in paragraph b of this subdivision 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.