

## **GUIDELINES FOR DISPOSITION OF PROPERTY**

### **OF**

## **OSWEGO TOBACCO ASSET SECURITIZATION CORPORATION**

### **1. Definitions**

As used herein, the following terms have the meaning set forth below:

“Act” means Title 5-A of the New York Public Authorities Law, as amended from time to time.

“Commissioner of General Services” means the Commissioner of the New York State Office of General Services.

“Contracting Officer” means the officer or employee of the Corporation appointed by Corporation resolution to be responsible for the disposal of Property.

“Dispose” or “Disposal” means transfer of title or any other beneficial interest in Property in accordance with these Guidelines and Section 2897 of the Public Authorities Law, as amended from time to time.

“Property” means personal property in excess of \$5,000 in value and any 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, excluding an interest securing a loan or other financial obligation of another party.

### **2. Purposes**

(a) The Public Authorities Accountability Act of 2005 requires the Corporation to adopt by resolution comprehensive Guidelines detailing the Corporation’s operative policy and instructions regarding the use, awarding, monitoring and reporting of contracts for the disposal of Property and designating a Contracting Officer with responsibility for compliance with, and enforcement of, these Guidelines. These Guidelines are intended to be consistent with the Act.

(b) The Corporation will dispose of its Property only in accordance with these Guidelines and the Act.

(c) The Act requires the Corporation to establish Guidelines to ensure that the Corporation will:

- (1) maintain adequate inventory controls and accountability systems for all Property owned by the Corporation and under its control;

- (2) periodically inventory such Property to determine which Property will be disposed of;
- (3) produce a written report of such Property in accordance with the Act; and
- (4) dispose of such Property as promptly as possible in accordance with the Act.

### **3. Duties Of Contracting Officer**

Except as otherwise provided herein and in the Act, the Contracting Officer will have supervision and direction over the disposal of Property of the Corporation and be responsible for compliance by the Corporation with, and enforcement of, these Guidelines.

### **4. Corporation Property**

#### *(a) Custody and Control of Corporation Property*

The custody and control of Corporation Property, pending its Disposal, and the Disposal of such Property, will be performed by the Corporation or by the Commissioner of General Services when so authorized under the Act and these Guidelines.

#### *(b) Disposal of Corporation Property*

##### (1) Disposal at Fair Market Value

The Corporation may dispose of its Property for not less than its fair market value by sale, exchange, or transfer, for cash, credit, or other property, with or without warranty, and upon such other terms and conditions as the Corporation by resolution deems proper under the Act and the Corporation's Certificate of Incorporation and Bylaws as implemented by these Guidelines. No disposition of real property, any interest in real property, or any other Property that because of its unique nature is not subject to fair market pricing will be made unless an appraisal of the value of such Property has been made by an independent appraiser and included in the Corporation's record of the transaction.

##### (2) Disposal by Commissioner of General Services

When the Corporation determines that disposal of any of the Corporation's Property by the Commissioner of General Services will be advantageous to the Corporation and the State of New York, the Corporation may enter into an agreement with the Commissioner of General Services pursuant to which the Commissioner may dispose of Property of the Corporation under terms and conditions agreed to by the Corporation and the Commissioner.

##### (3) Public Advertising Required

- (A) All disposals or contracts for disposal of Property of the Corporation will be made after publicly advertising for bids, except as provided in Section 4.2(4).
- (B) Whenever public advertising for bids is required under this Section 4.2(3):
  - (i) the advertisement for bids will be made at such time prior to the disposal, or contract for disposal through such methods and on such terms and conditions as the Contracting Officer determines will permit full and free competition consistent with the value and nature of the Corporation's Property to be disposed;
  - (ii) all bids will be publicly disclosed at the time and place stated in the advertisement; and
  - (iii) the award will be made by the Contracting Officer on behalf of the Corporation with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Corporation taking into consideration, price and other factors.
- (C) All bids may be rejected when the Corporation determines it is in the public interest to do so.

(4) Exception to Public Advertising Requirement

- (A) Disposals and contracts for disposal of Property may be negotiated or made by public auction, subject to obtaining such competition as the Contracting Officer determines to be feasible under the circumstances, if:
  - (i) the personal Property involved is of a nature and quantity that, if disposed of under Sections 4.2(3), would adversely affect the state or local market for such Property, and the estimated fair market value of such Property and other satisfactory terms of disposal can in the opinion of the Board be obtained by negotiation;
  - (ii) the fair market value of the Property does not exceed \$15,000;

- (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 estimated fair market value of the Property;
  - (vi) the terms of such disposal are obtained by public auction or negotiation; and
  - (vii) the disposal of the Property is intended to further the public health, safety or welfare or an economic development interest of the Corporation, the state or a political subdivision of the State (including the prevention or remediation of a substantial threat to public health or safety, the creation or retention of a substantial number of job opportunities, or the creation or retention of a substantial source of revenues;
  - (viii) the purpose and the terms of such disposal are documented in writing and approved by resolution of the Corporation; or
  - (ix) such action is otherwise authorized by law.
- (B) An explanatory statement must be prepared by the Contracting Officer of the circumstances of any disposal without advertising of:
- (i) any personal Property that has an estimated fair market value in excess of \$15,000;
  - (ii) any real Property that has an estimated fair market value in excess of \$100,000, except that any real Property disposed of by lease or exchange will only be subject to clauses (3) through (5) of this subparagraph;
  - (iii) any real Property disposed of by lease for a term of five years or less, if the estimated fair annual rent is in excess of \$100,000 for any of such years;

- (iv) any real Property disposed of by lease for a term of more than five years, if the total estimated rent over the term of the lease is in excess of \$100,000; or
  - (v) any real Property or real and related personal Property disposed of by exchange, regardless of value, or any Property any part of the consideration for which is real Property.
- (C) Each such explanatory statement will be transmitted to the Comptroller of the State, the Director of Budget of the State, the Commissioner of General Services and the New York Legislature, not less than 90 days in advance of such disposal, and a copy will be retained in the files of the Corporation.

## **5. Reports**

(a) If required by applicable law, the Corporation will publish a report listing all Property of the Corporation. Such report will consist of a list and full description of all real and personal Property disposed of during a given reporting period. The report will contain the price received by the Corporation and the name of the purchaser for all such Property disposed of by the Corporation during a given reporting period.

(b) If required by applicable law, the Corporation will deliver copies of each report to the Comptroller of the State of New York, the Director of the Budget of State of New York, the Commissioner of the New York State Office of General Services and the New York State Legislature.

## **6. Annual Review and Amendments of Guidelines**

The Guidelines are subject to modification and amendment at the discretion of the Corporation in accordance with the Act and the Corporation's Bylaws. The Corporation will review and approve the Guidelines annually including the name of the Contracting Officer.