

## 946 CMR 2.00: DISPOSITION OF STATE SURPLUS LANDS

## Section

- 2.01: Preamble
- 2.02: Selection of Development Proposals for State Surplus Lands
- 2.03: Criteria
- 2.04: Evaluation of Proposals

2.01: Preamble

The Government Land Bank ("Bank"), pursuant to St. 1975, c. 212, as amended ("Enabling Act"), may dispose of state surplus land or an interest therein ("State Surplus Lands") to any persons, including without limitation governmental agencies and instrumentalities and private persons or entities, whether for profit or not-for-profit, to the extent allowable by the Enabling Act, and other applicable law, and consistent with a redevelopment plan approved pursuant to the Enabling Act ("Redevelopment Plan"). Prior to such disposition, the Bank shall undertake an independent determination of the value of the State Surplus Lands through procedures customarily accepted by the appraising profession as valid for determining property value ("Appraisal"). If the consideration for the State Surplus Lands is to be less than the value as determined by an Appraisal, notices of this difference shall be disclosed in the Central Register published by the Secretary of State and given to the House and Senate Ways and Means Committees prior to such disposition. Additionally, if a formal competitive process will not be the method utilized for the disposition of State Surplus Lands to a private person or entity, the Bank shall disclose the reasons therefore in said Central Register prior to such disposition.

The decision by the Bank, when utilizing a competitive disposition process, to convey or transfer State Surplus Lands to any private person or entity must be based on an evaluation of proposals pursuant to the following regulations.

2.02: Selection of Development Proposals for State Surplus Lands

946 CMR 2.00 sets forth the criteria by which the Bank will determine the acceptability of proposals from private individuals or entities for the development of State Surplus Lands being disposed of by the Bank when utilizing a competitive disposition process.

946 CMR 2.00 also articulate the method by which decisions related to such dispositions shall be made.

All selection criteria will be articulated and included in any request for proposals ("RFP") regarding Surplus State Lands being disposed of by the Bank through a competitive process.

The selection criteria are divided into three sections. 946 CMR 2.03(1) lists threshold criteria which must be satisfactorily included in a proposal in order for that proposal to receive further consideration. 946 CMR 2.03(2) lists performance criteria that will determine which of the proposals meeting the threshold criteria is most advantageous for the Bank and the Commonwealth. 946 CMR 2.03(3) lists the price and terms to be paid for the interest being disposed of by the Bank.

Due to the diverse nature of State Surplus Lands that may be disposed of pursuant to 946 CMR 2.00, as well as the types of development proposals to be considered with regard thereto, it may be necessary, on a case by case basis, to add or delete threshold and performance criteria, or to shift criteria listed as performance criteria into the category of threshold criteria or vice versa. Any such variance in the criteria categories and the reasons therefore shall be articulated in writing in the specific RFP.

All RFP's prepared by the Bank in connection with the disposition of State Surplus Lands utilizing a competitive process will indicate which of the performance criteria reflect areas of greatest concern and hence will be given greater consideration than others.

2.03: Criteria(1) Threshold Criteria

- (a) A development proposal must comply with:

## 2.03: continued

1. The development scheme contained in the Redevelopment Plan, including specific requirements set forth therein (minimum parking requirements, etc.);
  2. Use restrictions imposed by the Department of Capital Planning and Operations ("DCPO") and the General Court; and
  3. Requirements of the RFP distributed for the subject property;
- (b) A development proposal must demonstrate the minimum financial strength and ability of the entity submitting the proposal to proceed to implement the development plan in said proposal as evidenced by:
1. The financial strength of the entity, including audited financial statements for the entity and its principals;
  2. The level of financial commitment to the proposal, including a detailed break-down of sources of funds available to implement the proposed development, including commitment letters indicating terms and conditions of financing; and
  3. The legal ability to undertake and complete the proposal, as indicated by the following evidence of which must be submitted:
    - a. certificate of good standing from the Department of Revenue;
    - b. Certification that the development entity is qualified to do business in Massachusetts;
    - c. Legal actions pending or judgments against the entity; and
    - d. Any history of tax arrears, bankruptcies, indictments, or convictions.
- (c) A development proposal must indicate that it will comply with local, state and federal environmental, zoning, and building statutes, ordinances and regulations, including M.G.L. c. 131 § 40, M.G.L. c. 30 §§ 61 through 62H, M.G.L. c. 9 §§ 26 and 27D and M.G.L. c. 21E.

(2) Performance Criteria

- (a) Demonstrated development experience and capability of the entity, including:
1. Names and addresses of properties recently developed or currently owned; and
  2. Resumes of all professionals working on the project.
- (b) Demonstrated property management experience and capability of the entity, including:
1. Names and addresses of all property managed by the entity or its proposed management agent;
  2. Number of years in the management business; and
  3. Number and qualifications of employees.
- (c) Evidence of economic feasibility of the use or uses proposed by the entity submitting the development proposal, which may include:
1. Development Pro Forma indicating:
    - a. Cost of land and buildings;
    - b. Estimated hard construction costs, including demolition and site preparation;
    - c. Estimated soft costs including professional fees, financing fees, construction loan interest, real estate taxes, insurance and all other costs required to bring construction to completion; and
    - d. Estimated contingencies.
  2. Operating Pro Forma for first six years indicating:
    - a. Projected income from rent or sales, including vacancy allowances;
    - b. Anticipated operating expenses;
    - c. Estimated real estate taxes including expected valuation;
    - d. Debt Service;
    - e. Date when property is expected to be sold or refinanced; and
    - f. Depreciation and other deductions indicating cash flow and returns on investment on an after-tax basis.
  3. Feasibility and Market Studies;
  4. Marketing Plan;
  5. Management Plan; and
  6. Pre-leasing or pre-sales commitments.
- (d) Schedule for implementation of the development proposal and relation of said schedule to:

2.03: continued

1. Timeliness in achieving the development goals set forth in the Redevelopment Plan.
  2. The overall economic feasibility of the development proposal.
- (e) Extent to which the development proposal exceeds minimum design guidelines contained in the Redevelopment Plan, the RFP, and any restriction imposed by DCPO and the General Court for development attributes the RFP designates as preferable, which may include the following considerations:
1. Massing, height and scale;
  2. Pedestrian, vehicular, and service access, parking and circulation;
  3. Public amenities, street and sidewalk improvements, public spaces and vistas;
  4. Building materials;
  5. Impacts on wind, shadow, daylight, ground water; and
  6. Impacts during construction of the above.
- (f) Extent to which the development proposal exceeds public purpose objectives and goals contained in the Redevelopment Plan, the RFP and any restriction imposed by DCPO or the General Court the RFP designates as preferable, which may include:
1. Employment:
    - a. Estimated number of construction jobs;
    - b. Estimated number of permanent jobs (retained and new);
    - c. Quality of permanent jobs;
    - d. Resident, minority, women hiring plans;
    - e. Linkages to local training programs, technical schools, universities, etc.; and
    - f. Backward and forward linkages to other Massachusetts industries and companies.
  2. Housing:
    - a. Number of units for market, moderate- and low- income families;
    - b. Size of units, both in square feet and number of bedrooms; and
    - c. Amenities for residents
  3. Increased tax revenues:
    - a. Current vs. projected taxes (including projected valuation); and
    - b. M.G.L. 121A payments.
  4. Participation by local entities;
  5. Potential for displacement and proposed mitigating measures;
  6. Leveraging of private investment;
  7. Kind, size, and extent of public subsidies;
  8. Linkage payments, if any;
  9. Other benefits; and
  10. Mechanisms for sustaining public benefits over time.
- (3) Price and Terms. All RFP's will specify a format or formats for submitting price and terms, will indicate which terms, if any, are subject to negotiation, and will indicate the procedures or formula by which the Bank will compute the net present value of each offeree's proposal.

2.04: Evaluation of Proposals

- (1) The Executive Director of the Bank shall be responsible for the evaluation of the proposals on the basis of the threshold and performance criteria. These evaluations shall specify in writing to the Board of Directors of the Bank:
  - (a) for each evaluation criterion, a rating of each proposal as highly advantageous, advantageous, not advantageous or unacceptable;
  - (b) a composite rating for each proposal, and the reasons for the rating; and
  - (c) revisions which should be obtained by negotiation prior to accepting the proposal.

2.04: continued

(2) The Board of Directors of the Bank shall consider the evaluations of the Director and the net present value to be paid and terms thereof for the interest being disposed of. The Board shall then vote to authorize the Director to (a) accept a proposal as submitted; (b) award based on negotiation of specific points; or (c) reject all proposals. If the negotiation referred to in 946 CMR 2.04(2)(b) is unsuccessful, the Board may accept another proposal or authorize the Director to award based on further negotiations. If the Board selects a proposal that does not contain the highest price (net present value) offered for the interest, the Board shall publish its reason(s) for selecting another proposal in the Central Register.

(3) The Bank recognizes that DCPO has general oversight authority over the disposition of State Surplus Lands, and that the General Court must approve any such disposition. Moreover, M.G.L. c. 7 contains numerous process requirements that must be adhered to prior to any such disposition, and the City or Town where such property is located may play a role in determining how such property is ultimately reused.

(4) As a result, the involvement of any or all of these bodies in a particular disposition may necessitate altering the method for selection of a proposal outlined above. Any such alteration in the selection process for particular State Surplus Lands and the reasons therefore shall be contained in the applicable RFP and shall additionally be published in the Central Register at least 30 days prior to the issuance of said RFP.

REGULATORY AUTHORITY

946 CMR 2.00: St. 1975, c. 212.