

## **REVISED GUIDELINES ON THE PRIVATIZATION AND DISPOSITION OF BCDA PROPERTIES**

### **I. RATIONALE**

The Guidelines establishes the procedure which shall serve as a guide and reference for the sale or lease of BCDA properties (*the disposition of BCDA assets/properties through Joint Venture shall be provided for under a separate guideline*) – both Metro Manila Camps and the proclaimed Special Economic Zones in Central and Northern Luzon. It is intended for the internal use of BCDA in pursuit of its disposition mandate.

The procedure set forth in the Guidelines, particularly, partnership with the private sector and the entry of foreign and local investments into BCDA-owned special economic zones will hasten the development of BCDA properties into growth centers and economic hubs.

### **II. POLICIES**

#### **A. General Policies**

1. It is BCDA's general policy not to dispose its properties through sale. The sale of its properties and assets will depend primarily on its market condition, the overall economic situation and the proposed Master Development Plan for the Property.
2. BCDA is mandated to dispose properties transferred to it to generate funds for the bases conversion and modernization of the Armed Forces of the Philippines (AFP):
  - 2.1 Metro Manila Camps
  - 2.2 Special Economic Zones
    - 2.2.1 Clark Special Economic Zone (CSEZ) including the New Clark City (formerly known as the Clark Green City)
    - 2.2.2 John Hay Special Economic Zone
    - 2.2.3 Poro Point Freeport Zone
    - 2.2.4 Bataan Technology Park
3. Privatization shall be the basic thrust of the conversion and development of BCDA-owned properties through sale, lease and joint venture or its variants (The process for JV selection will be discussed in a separate guideline).
4. The disposition of the properties shall be governed by the provisions of the following laws and issuances:
  - 4.1 Republic Act No. 7227 (The Bases Conversion and Development Act of 1992) as amended (**Annex A**);
  - 4.2 Republic Act No. 9400 (Amendment to RA 7277) (**Annex B**);
  - 4.3 Executive Order No. 40, S. 1992 (**Annex C**);
  - 4.4 Executive Order No. 62, S. 1993 (**Annex D**);
  - 4.5 Executive Order No. 429, S. 1997 (**Annex E**);
  - 4.6 Republic Act No. 7652 (Investors' Lease Act) (**Annex F**);

- 4.7 Guidelines and Procedures for Entering into Joint Venture (JV) Agreements between Government and Private Entities (JV Guidelines) issued by the National Economic Development Authority (NEDA) (**Annex G**);
- 4.8 Republic Act No. 9184 (Government Procurement Reform Act of 2003) and its Implementing Rules and Regulations, as amended, to the extent applicable (**Annex H**);
5. BCDA shall ensure that the privatization of its properties is done in accordance with existing government rules and regulations and its development plan for these properties. Should there be conflict between this Guidelines and the law, the latter shall prevail.
6. BCDA shall promote both competition and efficiency in the development of its properties by establishing clear and simple disposition policies and procedures to encourage the entry of investments.

**B. Policies on Disposition of Properties**

1. As a general rule, the privatization of the Property shall be conducted through public bidding. Consistent with existing laws, rules and regulations on negotiated contracts, BCDA however, may resort to direct negotiation under any of the following conditions:

**Special Economic Zones**

- 1.1 When the transaction involves a foreign or local investment under the provisions of Republic Act No. 7652, otherwise known as Investors' Lease Act of 1994 and Executive Order No. 429, series of 1997; or
- 1.2 When the transaction involves leases to industrial, institutional or "*anchor*" locators. For this purpose, "*anchor*" locators shall mean companies or locators whose presence shall add prestige or attract business investment or tourism inside BCDA-owned special economic zones, as may be approved by the BCDA Board, pursuant to Executive Order No. 62, series of 1993 and Executive Order 429, series of 1997; or
- 1.3 When the transaction is between BCDA and another government agency/entity applying suppletorily the Revised Implementing Rules and Regulations of Republic Act No. 9184 or the Government Procurement Reform Act of 2003; or
- 1.4 When the transaction is between BCDA and a foreign government agency/entity;
- 1.5 When the lease transaction involves the development of areas of not more than ten (10) hectares and the minimum indicative lease rate shall not be lower than the appraised value of the land; or
- 1.6 When the transaction has a lease term of five (5) years and below or with a total consideration of PHP50 Million and below.

### **Metro Manila Camps**

- 1.7 On the occurrence of one (1) failed bidding for the same property consistent with COA Circular No. 89-296, series of 1989 or the Guidelines on the Divestment or Disposal of Assets of Government-Owned and/or Controlled Corporations and their Subsidiaries (**Annex I**);
- 1.8 When the transaction is between BCDA and another government agency/entity applying suppletorily the Revised Implementing Rules and Regulations of Republic Act No. 9184 or the Government Procurement Reform Act of 2003;
- 1.9 When the negotiation (e.g. lease, sale and JV) is in conformity with policies approved by the President of the Republic of the Philippines (EO 62, Section 4.5).

### **III. PROCEDURE**

#### **A. Disposition through public bidding.**

1. The BCDA Board shall constitute the Asset Disposition Program Committee (ADP-Com) for real estate development and ADP Com for Small Value Properties (SVP) as well as the Joint Venture Selection Committee (JV-SC) for utilities, concessions and other businesses including real estate development (the JV-SC shall be discussed in a separate guideline).
2. The ADP-Com shall formulate and recommend for the BCDA Board's approval, the Terms of Reference (TOR) for the privatization and development of the Property, including the mode, price and other terms and conditions of the disposition. Any changes to the TOR that affect the qualifications of the bidders, price and terms of payment, mode and timing of disposition as well as the basis of selection shall be subject to prior approval of the BCDA Board.
3. The ADP-Com shall administer the bidding for the disposition of the property pursuant to the approved TOR.
4. The terms of the contract shall be in accordance with the rules and requirements set forth in the respective TORs for the disposition of the property subject of the privatization/development. The draft pro-forma Contracts for each disposition activity shall be prepared by the Legal Services Department (LSD), which shall also be in charge of having said draft Contracts reviewed by the Office of the Government Corporate Counsel (OGCC).
5. Upon contract signing, a coordination meeting with the concerned BCDA departments shall be conducted to officially turn over the implementation of the project to the concerned department, monitoring of the project by the Subsidiaries, Affiliates and Projects Monitoring Department (SAP-MD) and enforcement of contract provisions by the LSD.

**B. Disposition through direct negotiation**

1. The proposal for the development of a property shall be endorsed to the Business Development and Operations Group (BDOG) and the Business Development Department (BDD) for review and recommendation to the BCDA Board, for approval of the minimum parameters for negotiation which shall include the financial terms and conditions.
2. Subject to the determination of the BCDA President and CEO, a composite team, composed of different BCDA departments (e.g. BDOG/BDD, FSG, LSD, etc.), may be created to negotiate with the proponent pursuant to the BCDA Board-approved parameters for negotiation. During this negotiation stage, the composite team may request for eligibility and other additional documents from the proponent, as may be necessary.
3. For lease of BCDA properties, the Board-approved parameters for negotiations, which is based on the most recent appraisal of the property and the Board-approved indicative lease terms shall be the basis for the minimum allowable lease rate for negotiating with the prospective partner, investor, and/or locator. Once an agreement is reached with the proponent, the BDD shall, in coordination with the LSD, facilitate the approval of the corresponding contract by the BCDA Board and facilitate its execution with the proponent.
4. For transactions falling under Sections II.B.1.1, once an agreement is reached, BCDA shall publish an announcement in its website or a newspaper of general circulation, inviting two or more qualified Private Sector Entities (PSEs) for a comparative proposal for the development of the property. In the interest of securing the optimum results, the proponent is given the right to outbid or give a better offer with a minimum premium rate of 10% from the comparative proposal, the parameters of which is determined by the BCDA Board. The right to outbid must be exercised by the proponent within 15 days from the determination of the highest comparative proposal.  
  
If no comparative proposal is received by BCDA, the Property shall be immediately awarded to the proponent.
5. The award to the winning PSE shall be approved by the BCDA Board. The BDD, in coordination with the LSD, shall facilitate the approval of the Contract and facilitate its execution with the proponent.
6. Upon contract signing, a coordination meeting with the Subsidiaries, Affiliates and Projects Monitoring Department (SAP-MD) shall be conducted to officially turn over the monitoring of the project to ensure the compliance of the Private Sector Partner (PSP) with its contractual provisions.

C. **The ADP-Com, ADP Com for Small Value Properties (SVP).**

The BCDA Board shall constitute an ADP-Com and JV-SC (the constitution of a JV-SC shall be discussed under a separate guideline) for all properties to be disposed and privatized (e.g. sale, lease or JV) through public bidding.

1. The ADP-Com, which shall be responsible for all activities related to the bidding, negotiation and award of the asset identified to be leased or sold to private sector entities, shall be composed of the existing ADP-Com as follows:

- 1.1 Regular (voting) Members:

- 1.1.1 Chairman;
    - 1.1.2 Vice-Chairman;
    - 1.1.3 Three (3) Members coming from the LSD, Business Development and Operations Group (BDOG) or LADD.

Only officers holding permanent positions shall be appointed to the ADP-Com.

- 1.2 Observers (non-voting) from the Internal Audit Services Office (IASO), and the Commission on Audit (COA) shall be invited to attend meetings and other activities of the ADP-Com.

A quorum of the ADP-Com shall be composed of at least three (3) regular members, provided that the presence of the Chairman or Vice-Chairman is required. The Chairman shall vote only in case of a tie.

2. For properties identified to be disposed and privatized under a **Joint Venture** (JV) mode, the constitution of the members of the JV Selection Committee shall be discussed in a separate guideline.
3. The BDD and at least two members from the other departments of BDOG shall serve as the Technical Working Group (TWG)/Secretariat to the ADP-Com and the JV-SC for all aspects related to the bidding/selection process, from pre-selection/pre-bidding until the contract is finally signed.

D. **Modes of Disposition**

The privatization mode to be adopted for a specific property shall depend on the nature and location of the property, the magnitude of the development envisioned in the approved master plan, the restrictions set by the appropriate regulatory bodies on the development of the property, and such other factors affecting the implementation of the project. Prior to the disposition, all properties must generally be appraised by a third party company, who shall be selected or engaged upon observance of the requirements of R.A. 9184. Such appraisal value shall be the basis of any disposition, unless otherwise approved by the BCDA Board.

In effectively determining the mode of disposition applicable for a property in the Metro Manila Camps, a cost-benefit analysis between sale and lease shall be conducted by the BDD prior to disposition.

1. **Sale.**

Proposals under the sale mode may either be for a cash sale, where the Winning Proponent shall remit to BCDA all at one time full payment of the purchase price of the property upon signing of the Deed of Absolute Sale; or an installment sale, where payments are based on a staggered scheme in accordance with the Board-approved Terms of Reference (TOR) for the specific property subject of the disposition. For installment sales, BCDA requires that an Upfront Cash, which shall be treated as a down payment, equivalent to twenty percent (20%) of the proposed purchase price be remitted to BCDA upon signing of the Contract to Sell (CTS).

For installment sales with a payment term of more than one (1) year, BCDA shall require all payments due on the balance to be secured by an acceptable form of guarantee (such as cashier's or manager's check, bank guaranty, bank letter of credit) issued by a universal bank or surety bond issued by the Government Service Insurance System (GSIS).

For properties with a Minimum Bid Price that is less than Five Hundred Million Pesos (Php500,000,000.00), BCDA requires that all payments on the purchase price be made within sixty (60) calendar days from Issuance of Notice of Award.

2. **Lease.**

2.1 **Term.** The initial lease period for the Property shall not exceed fifty (50) years renewable for another twenty five (25) years.

2.2 **Indicative Lease Terms.** The lease terms, include, but are not limited to, indicative lease rates, rent-free period, advance payments, annual escalation rates, ramp-up rate, shall be approved by the BCDA Board after the completion of the appraisal activity. The indicative lease rates shall be effective for three (3) years unless sooner revised, which shall again be approved by the BCDA Board.

2.3 **Renewal of the Lease.** The Lease Payments for the renewal period shall be set in accordance with the following procedure:

2.3.1 At least two (2) years prior to the end of the initial lease period, the parties shall have the Property, re-appraised by two (2) independent appraisers mutually acceptable to the parties for the purpose of determining the current fair market value of the land on the last year of the initial lease period. BCDA shall have the absolute right to choose the appraised value of the property from within the independent appraisers' report.

2.3.2 Unless otherwise approved by the BCDA Board in consideration of prevailing economic/market conditions, the Fixed Lease for the first year of the renewal period shall be the higher of:

1. Five percent (5%) of the appraised value of the Leased Property on the last year of the initial lease period, subject to the agreed upon escalation rate; or
2. the Fixed Lease on the last year of the initial lease period, subject to the agreed upon escalation and ramp-up rates.

2.3.3 The agreed upon annual escalation and ramp-up rates shall continue to apply on the Annual Lease during the extension period.

2.4 **Regular review of lease terms.** The BDD shall conduct regular review of the terms and conditions of the lease and shall make recommendations on proposed revisions, subject to approval by the BCDA Board.

### 3. **Joint Venture**

A separate Guidelines has been prepared for the selection of BCDA's JV Partner for the development of BCDA assets. Its objective is to establish partnership with the private sector and to encourage the entry of local and foreign investments to accelerate the development of BCDA assets and properties thus increasing its value.

## E. **Terms of Reference.**

1. The Terms of Reference (TOR), which shall prescribe the rules and procedures in the privatization and development of a property, shall be subject to the approval of the BCDA Board.
2. The TOR shall contain the following provisions, among other things:
  - 2.1 Requirements for Technical and Financial Proposals, which shall include the minimum investment requirement and required performance bond/guarantees for such investments, minimum required payments to BCDA and the acceptable forms of guarantees for such required payments, and the development timetable, which shall include the specific dates for commencement, implementation schedule and phasing, and completion of development of the project; and
  - 2.2 Incentives and Penalties. BCDA may also include provisions for incentives to private sector partners for early development of the project and/or penalty clauses for non-development or delay in the development as committed in its proposal.
  - 2.3 In case of conflict between the TOR and the resulting contract, the provisions of the TOR and its supplemental bid bulletins, if any, shall prevail.

**F. Schedules and Timelines**

The President/ CEO, upon the recommendation of the ADP-Com/BDOG, shall have the authority to adopt and prescribe the appropriate schedules and timelines for each selection process; provided, that the periods are reasonable and will not undermine free competition, transparency and accountability.

**G. Amendments**

This Guideline may be amended and/or modified from time to time by BCDA subject to approval from the BCDA Board.

**H. Effectivity**

This Guideline and any subsequent amendment or modification shall take effect immediately on the date of its publication in a newspaper of general circulation or the Official Gazette or other modes legally acceptable, and a copy of it shall be submitted to the Office of the National Administrative Registry (ONAR) and the UP Law Center.

Any provisions of the Manual of Approval and other issuances inconsistent herewith, are hereby repealed, revised or amended.